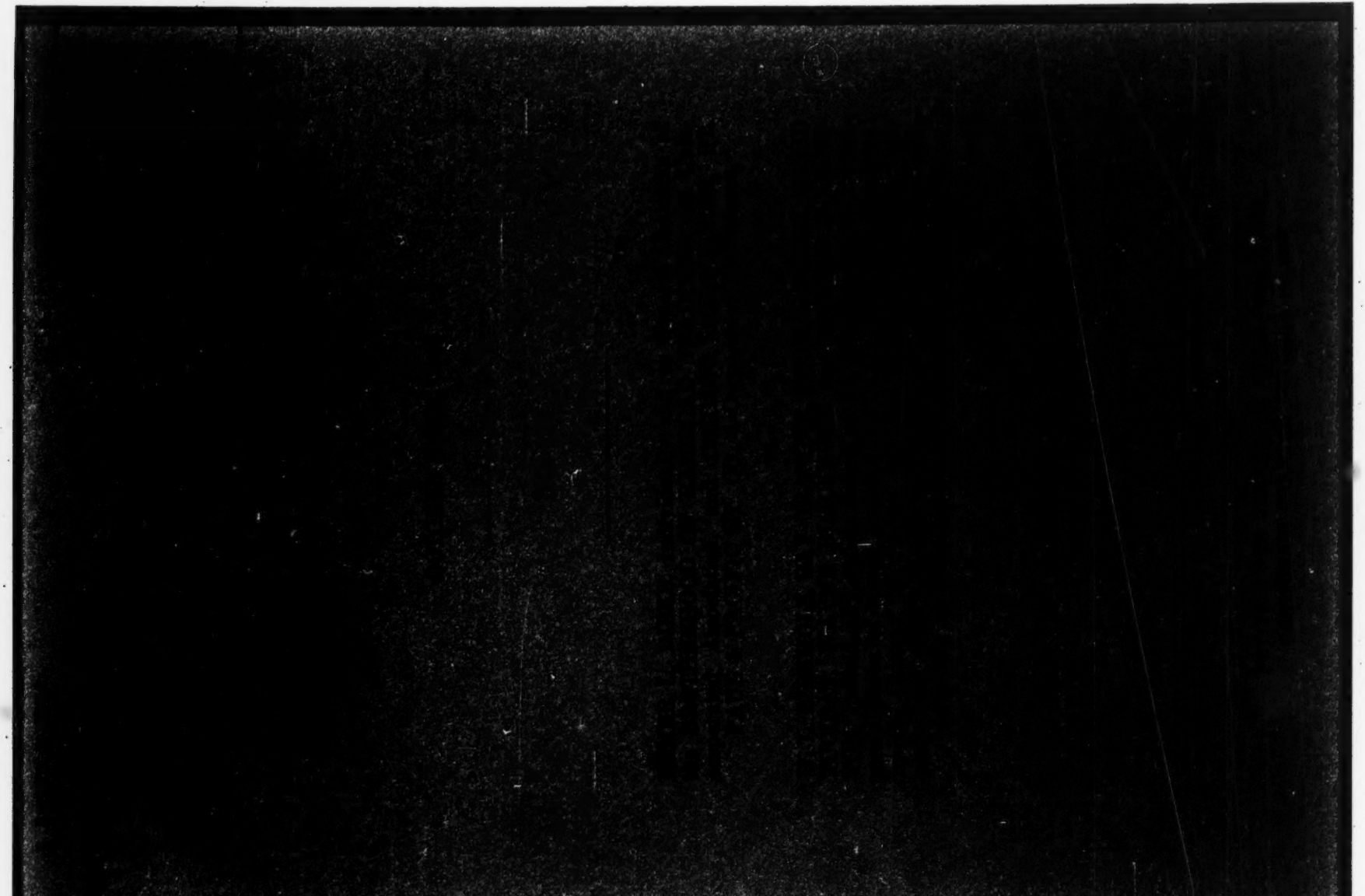

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968

NO. 172

ELMER L. DIRKS, Individually and as General Chairman of the BROTHERHOOD OF RAILROAD TRAINMEN, an Unincorporated Association, and CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RY. CO., a Corporation, Petitioners,

vs.

W. L. BIRKHOLZ, RAY GRANGER, THOMAS FOLEY, DAVID TUCIBAT, WAYNE BLACKBURN and MARVIN HOISINGTON, Individually and in Behalf of All Members of the Switchmen's Union of North America, AFL-CIO, Who Are Employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and SWITCHMEN'S UNION OF NORTH AMERICA, AFL-CIO, an Unincorporated Association, Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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RELEVANT DOCKET ENTRIES.

Date	Proceedings
2-23-67	Filed complaint and 6 copies.
	• • • • • • • •
2-23-67	Issued Summons and 6 copies with 6 copies of complaint.
	• • • • • • • •
2-23-67	Motion of Plaintiffs for a Temporary Restraining Order argued and denied. Hoffman, J.
	• • • • • • • •
3- 1-67	Filed Notice and motion for a preliminary injunction by plaintiffs.
	• • • • • • • •
3-13-67	Filed summons returned served as to Chicago, Milwaukee and St. Paul and Pacific Railroad, Elmer Dirks, and Brotherhood of Railroad Trainmen (3 services).
3-15-67	Filed Verified Answer by defendant, Elmer L. Dirks.
	• • • • • • • •
3-15-67	Filed Verified Answer of defendant, Brotherhood of Railroad Trainmen.
	• • • • • • • •
3-21-67	Filed Answer of defendant, Chicago, Milwaukee, St. Paul and Pacific Railroad Company.
	• • • • • • • •

Docket Entries

3-21-67 By Stipulation order time for defendant, Chicago, Milwaukee, St. Paul and Pacific Railroad Company to answer or to otherwise plead extended to and including March 21, 1967. Lynch, J.

3-24-67 Filed Notice and Motion to dismiss the complaint as to defendants Luna, Chester and Chase.

3-24-67 On Motion of Defendants Charles Luna, L. E. Chester and W. E. B. Chase, complaint is hereby dismissed as to said defendants. Decker, J.

* * * * * * * *

4- 3-67 Re-Hearing on motion for Preliminary Injunction. Opening statements waived by the parties. Evidence heard in part for plaintiffs. Cause continued to April 4, 1967 at 10:00 A. M. for further hearing.—Hoffman, J.

4- 4-67 Further evidence heard for plaintiffs. Plaintiffs rest. The court sustains the motion of the several defendants to dismiss the complaint made at the close of the plaintiffs' evidence, and will render judgment against the plaintiffs and judgment will be on the merits. Hoffman, J.

* * * * * * * *

5 -3-67 Filed notice of motion and plaintiffs' motion for leave to file additional supporting authority and for temporary restraining order pending entry of judgment.

5- 3-67 Motion of plaintiffs for leave to file additional supporting material and for a temporary restraining order, denied. Hoffman, J.

* * * * * * * *

Docket Entries

5-24-67	Enter Findings of Fact and Conclusions of Law. Ordered that the complaint herein be and the same is hereby dismissed and that the plaintiffs do have and recover nothing from the defendants by reason of this action against said defendants; that said action be and the same is hereby dismissed on the merits and that said defendants do have and recover of and from said plaintiffs their costs in this action. Hoffman, J.
	• • • • • • • •
6- 2-67	Filed Plaintiff's Notice of Appeal.

IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

W. L. Birkholz, Ray Granger, Thomas Foley, David Tucibat, Wayne Blackburn and Marvin Hoisington, individually and in behalf of all members of the Switchmen's Union of North America, AFL-CIO, who are employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Switchmen's Union of North America, AFL-CIO, an unincorporated association,
Plaintiffs,

vs.

Elmer L. Dirks, individually and as General Chairman of the Brotherhood of Railroad Trainmen, an unincorporated association, Charles Luna, L. E. Chester, and W. E. B. Chase, individually and in behalf of all members of the Brotherhood of Railroad Trainmen, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, a corporation,
Defendants.

Civil Action.
No. 67-C-285.

VERIFIED COMPLAINT FOR INJUNCTION, DECLARATORY JUDGMENT AND DAMAGES.

This is a complaint for injunction, declaratory judgment and damages. This Court has jurisdiction of this complaint under United States Code, Title 28, Section 1337, conferring original jurisdiction upon this Court of any

civil action or proceeding arising under any Act of Congress regulating commerce, the cause of action herein stated being one for the violation of certain of plaintiffs' rights under the Railway Labor Act, as amended, 45 U. S. C. 151, et seq. This Court has jurisdiction to grant the declaratory judgment herein prayed pursuant to Section 2201 of the Judicial Code, United States Code, Title 28, Section 2201. The defendant, Chicago, Milwaukee, St. Paul & Pacific Company has its principal office in and operates railroad lines into and out of Chicago, Illinois, within this district. The contract which has been entered into, and which the defendants are threatening to apply, in violation of the Railway Labor Act, as hereinafter set forth, was negotiated at Chicago, Illinois, within this district.

1. The plaintiff, W. L. Birkholz, is now, and has for the past 25 years been, employed by the defendant railroad as a yard service employee. He is now, and at all times for the past 10 years has been, a member of the plaintiff Switchmen's Union.

2. The plaintiff, Ray Granger, is now, and has for the past 25 years been, employed by the defendant railroad as a yard service employee. He is now, and at all times for the past 10 years has been, a member of the plaintiff Switchmen's Union.

3. The plaintiff, Thomas Foley, is now, and has for the past 26 years been, employed by the defendant railroad as a yard service employee. He is now, and at all times for the past 10 years has been, a member of the plaintiff Switchmen's Union.

4. The plaintiff, David Tucibat, is now, and has for the past 10 years been employed by the defendant railroad as a yard service employee. He is now, and at all times here relevant has been, a member of the plaintiff Switchmen's Union.

5. The plaintiff, Wayne Blackburn, is now, and has for the past 9 years been, employed by the defendant railroad as a yard service employee. He is now, and at all times here relevant has been, a member of the plaintiff Switchmen's Union.

6. The plaintiff, Marvin Hoisington, is now and has for the past 15 years been, employed by the defendant railroad as a yard service employee. He is now, and at all times here relevant has been, a member of the plaintiff Switchmen's Union.

7. The members of the Switchmen's Union of North America, AFL-CIO, who are employed as yard service employees by the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company, exceed 500 in number and constitute a class composed of persons so numerous as to make it impossible to bring them all before the court in person. The plaintiffs, W. L. Birkholz, Ray Granger, Thomas Foley, David Tucibat, Wayne Blackburn and Marvin Hoisington are members of this class who will fairly ensure the adequate representation of all members of the class for the purposes of this suit.

8. The plaintiff Switchmen's Union of North America, AFL-CIO, is an unincorporated association and a labor organization, having its national office and headquarters at 3 Linwood Avenue, Buffalo 2, New York. The Switchmen's Union of North America is a labor organization national in scope, organized in accordance with the provisions of Section 2 of the Railway Labor Act, as amended (45 U. S. C. 152) and as such has continuously since adoption of the 1934 amendments to the Railway Labor Act (48 Stat. 926), participated in the selection and designation of the labor members of the National Railroad Adjustment Board.

9. The defendant Elmer L. Dirks is General Chairman of the General Grievance Committee of the defendant

Brotherhood of Railroad Trainmen on the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Lines East, and is here sued both individually and as such general chairman.

10. The defendants Charles Luna, L. E. Chester and W. E. B. Chase are respectively the president, assistant to the president and general-secretary and treasurer of the Brotherhood of Railroad Trainmen and are here sued both individually and as representatives of a class composed of all of the members of the Brotherhood of Railroad Trainmen. The members of the Brotherhood of Railroad Trainmen are so numerous as to make it impossible to bring them all before the court in person. The defendants Charles Luna, L. E. Chester, W. E. B. Chase and Elmer L. Dirks, as officers and members of said labor organization, will fairly ensure the adequate representation of all members for the purposes of this suit.

11. The defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company is a corporation organized and existing within the laws of the State of Wisconsin and is a carrier within the meaning of Section 1 of the Railway Labor Act, as amended (45 U. S. C. 151).

12. On November 18, 1966 the plaintiff Switchmen's Union filed a petition with the National Mediation Board, accompanied by authorization cards in the Switchmen's Union signed by 718 employees of the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company, in which petition the Switchmen's Union alleged that it had been designated by a majority of the employees within the craft or class of yard service employees on the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company as their representative for purposes of the Railway Labor Act and asking the National Mediation Board to so certify it, all as more fully appears from a copy of said petition marked Exhibit A attached hereto

and made a part hereof. Said petition has been docketed by the National Mediation Board as Case No. R-4895 and the National Mediation Board will, within the course of the next few months, hold an election to determine whether the yard service employees of the said railroad desire to be represented by the plaintiff Switchmen's Union or by the defendant Brotherhood of Railroad Trainmen.

13. On February 1, 1967 the defendant Brotherhood of Railroad Trainmen and the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company entered into an agreement which by its terms is in violation of Section 2, Third of the Railway Labor Act, as amended (45 U. S. C. 152, Third) in that said agreement requires all employees covered thereby as a condition of employment to become and remain members of the defendant Brotherhood of Railroad Trainmen within sixty days after the effective date of the agreement, without providing that as to all employees covered by said agreement membership in any other labor organization national in scope which admits to membership employees within the craft or class of engine, train, yard or hostlery service shall satisfy the requirement of membership as required by said agreement as is made mandatory by Section 2, Eleventh (c) of the Railway Labor Act as amended. A copy of said agreement marked Exhibit B is attached hereto and made a part hereof.

14. By the proviso clause at the end of Section 1 (b) to said agreement all employees in the yard service are required to join and maintain membership in the defendant Brotherhood of Railroad Trainmen in that the Switchmen's Union does not have any labor contract with the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Lines East) and in that some of the yardmen employed by defendant railroad hold no interchangeable rights. The effect of this clause is to require all of the

plaintiffs and all of the other members of the class they represent to cease being members of the plaintiff Switchmen's Union and become members of the defendant Brotherhood of Railroad Trainmen or be discharged from their employment with defendant railroad. Section 2, Eleventh (c) of the Railway Labor Act as amended grants all yard service employees the right to belong to any labor organization national in scope which admits yard service employees to membership. By denying plaintiffs this right, said agreement violates Section 2, Third and Eleventh of the Railway Labor Act, as amended.

15. Said agreement by its terms is effective on March 1, 1967. Unless this Court enters a restraining order protecting the plaintiffs from loss of their jobs for failure to join the defendant Brotherhood of Railroad Trainmen, the plaintiffs will be denied their right under the Railway Labor Act to join and be members of the labor organization of their free choice without coercion or restraint by their employer.

16. The defendant Brotherhood of Railroad Trainmen and the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company entered into said agreement for the purpose of influencing the results of the election to be conducted by the National Mediation Board in favor of the defendant Brotherhood of Railroad Trainmen and to the disfavor of the plaintiff Switchmen's Union in violation of Section 2 of the Railway Labor Act, as amended.

17. Many of the plaintiffs and the class they represent hold valuable insurance rights which depend on their continued membership in the plaintiff Switchmen's Union, in that approximately 60 of the yard service employees in the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company are insured in the Equitable Life Assurance Society under Policy ADSD 16222 issued to them as members of the plaintiff Switchmen's Union and some

others are insured under Aetna Group Policy 7-47350, also issued to them as members of the plaintiff Switchmen's Union, all of which constitute valuable property rights which will be lost if they are required to comply with the terms of the above described agreement dated February 1, 1967, which requires them to join the defendant Brotherhood of Railroad Trainmen.

18. The defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company has threatened to discharge the plaintiffs and the members of the class they represent and each of them if they do not join and remain members of the defendant Brotherhood of Railroad Trainmen, all of which threats are in violation of Section 2 of the Railway Labor Act, as amended.

19. The requirement that the plaintiffs and the other members of the class they represent must join and maintain membership in the defendant Brotherhood of Railroad Trainmen as a condition of employment deprives said persons and each of them of the right to join and remain members of the union of their own choice in that said plaintiffs and the other members of the class they represent desire to belong only to the plaintiff Switchmen's Union and cannot afford to pay initiation fees and dues to two unions.

20. Each of the plaintiffs and each of the other members of the class they represent has seniority rights entitling him to preferential employment by the defendant railroad which constitute valuable property rights which will be lost in the event of a discharge for failure to join the defendant Brotherhood of Railroad Trainmen as required by said agreement of February 1, 1967.

21. The plaintiff Switchmen's Union of North America is a labor organization engaged in representing employees in yard service on carriers throughout the United States, and as such it and its members are protected by Section

2 of the Railway Labor Act, as amended, from acts of carriers, including the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company, which interfere with or coerce employees, including the plaintiff employees, in the exercise of their right to join and designate the Switchmen's Union as their representative.

22. The membership of the plaintiff employees in the plaintiff Switchmen's Union constitutes a valuable contract and property right of each of the plaintiffs and the conduct of each of the defendants. Brotherhood of Railroad Trainmen and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, has unlawfully interfered with such contract and property rights.

23. The conduct of the defendant Brotherhood of Railroad Trainmen and the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company has caused and threatens to cause each of the plaintiffs irreparable injury for which no remedy in damages is available.

24. The conduct of each of the defendants, Brotherhood of Railroad Trainmen and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, has caused the plaintiff Switchmen's Union of North America damages in that employees on the defendant railroad and other employees on all railroads where the Brotherhood of Railroad Trainmen hold contracts have become afraid that they will lose their jobs unless they cease being members of the Switchmen's Union and join the defendant Brotherhood of Railroad Trainmen, which has caused the plaintiff Switchmen's Union damages in the sum of One Hundred Thousand Dollars.

Wherefore, the plaintiffs pray:

1. That this Court issue a temporary restraining order pending hearing on the motion for preliminary injunction and issue a preliminary injunction pending hearing on the merits and then a permanent injunction restraining the

defendants, and each of them, and their officers, agents, servants and representatives from discharging or threatening to discharge the plaintiffs or any other employee of the defendant railroad for failure to join or maintain membership in the defendant Brotherhood of Railroad Trainmen so long as he maintains membership in the plaintiff Switchmen's Union of North America.

2. That this Court declare that the provision of the proviso to Section 1 (b) of the agreement dated February 1, 1967 between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and the Brotherhood of Railroad Trainmen violates Section 2, Eleventh (c) of the Railway Labor Act, as amended, and hence is null and void and of no effect, in that membership in the Switchmen's Union satisfies the requirement of membership in a labor organization national in scope even though the Switchmen's Union holds no labor contract with the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and even though some yard service employees do not hold interchangeable rights.

3. That the Court award plaintiff Switchmen's Union of North America damages in the sum of One Hundred Thousand Dollars against the defendants, Brotherhood of Railroad Trainmen and Chicago, Milwaukee, St. Paul & Pacific Railroad Company and each of them.

4. That the Court award the plaintiffs attorney's fees, costs, expenses and such other and further relief as the case may require.

Lee Leibik,
Ruth Weyand,
343 South Dearborn Street,
Chicago, Illinois 60604,
Phone: WAbash 2-0677.

Dated this 23rd day of February, A. D., 1967 at Chicago, Illinois.

Verified Answer of Elmer L. Dirks

State of Illinois, } ss.
County of Cook. }

W. L. Birkholz being duly sworn on oath, do depose and say that I have read the foregoing and annexed complaint, that I have personal knowledge of the facts therein stated and that the same are true.

W. L. Birkholz.

(Jurat omitted in printing.)

(Exhibit A, pages 1 and 2 and Exhibit B to the Verified Complaint were admitted into evidence as Plaintiff's Exhibits Nos. 4, 5 and 9, respectively, and have not been reproduced here. They are printed *infra*, at pp. 75, 77 and 92 of this Appendix.)

In the United States District Court.

* * * * * * * *

(Title omitted in printing.)

VERIFIED ANSWER.

Now comes Elmer L. Dirks, individually and as General Chairman of the Brotherhood of Railroad Trainmen, one of the defendants named above, by his attorneys, David Leo Uelmen, Lester Asher and Michael C. Greenfield, and as and for an answer to the complaint admits, denies and alleges as follows:

1. Answering the introductory paragraph to the complaint, this answering defendant denies that the Court has jurisdiction over those parts of the complaint which refer to the election petition filed by the plaintiff union with the National Mediation Board (Complaint, Par. 12).

Further answering the introductory paragraph to the complaint, this answering defendant denies that this Court has jurisdiction over those parts of the complaint

which advance a construction of the provisions of the collective bargaining agreement (Complaint, Par. 14), because Congress has granted exclusive jurisdiction over these matters to the National Railroad Adjustment Board, *Slocum v. Delaware, Lackawanna & Western Ry. Co.*, 339 U. S. 239, and to system, group, or regional Boards of Adjustment as authorized by Public Law 89-456, §§ 1, 2, 80 Stat. 208, 209; June 20, 1966.

Further answering the introductory paragraph to the complaint, this answering defendant denies that this Court has jurisdiction to determine whether the terms of the collective bargaining agreement comply with the provisions of the Railway Labor Act, Title 45, U. S. C. A., § 151 et seq., until after the individually named employee-plaintiffs have exhausted the procedures of the contract (Complaint, Ex. "B", p. 3, Sec. 8).

Further answering the introductory paragraph to the complaint, this answering defendant denies that the collective bargaining agreement entered into on February 1, 1967, violates any provision of the Railway Labor Act or any other federal statute.

2. Answering Paragraph 1 of the complaint, this answering defendant denies knowledge or information sufficient to form a belief and therefore puts the plaintiffs to their proof with respect to the allegations contained therein.

3. Answering Paragraph 2 of the complaint, this answering defendant denies knowledge or information sufficient to form a belief and therefore puts the plaintiffs to their proof with respect to the allegations contained therein.

4. Answering Paragraph 3 of the complaint, this answering defendant denies knowledge or information suffi-

cient to form a belief and therefore puts the plaintiffs to their proof with respect to the allegations contained therein.

5. Answering Paragraph 4 of the complaint, this answering defendant denies knowledge or information sufficient to form a belief and therefore puts the plaintiffs to their proof with respect to the allegations contained therein.

6. Answering Paragraph 5 of the complaint, this answering defendant denies knowledge or information sufficient to form a belief and therefore puts the plaintiffs to their proof with respect to the allegations contained therein.

7. Answering Paragraph 6 of the complaint, this answering defendant denies knowledge or information sufficient to form a belief and therefore puts the plaintiffs to their proof with respect to the allegations contained therein.

8. Answering Paragraph 7 of the complaint, this answering defendant denies each and every allegation contained therein.

9. Answering Paragraph 8 of the complaint, this answering defendant admits the allegations contained therein.

Further answering Paragraph 8 of the complaint, this answering defendant alleges that the Switchmen's Union of North America has never been either recognized as the bargaining agent for the employees employed by the defendant railroad in the bargaining unit in issue nor has it ever been certified by the National Mediation Board to represent the employees. The Switchmen's Union of North America is a minority organization making an effort to undermine the Brotherhood of Railroad Trainmen as the

bargaining agent for the employees and has no standing to complain to this Court that employees receiving the benefits of the agreement will be compelled to help provide financial support to the defendant union. The Switchmen's Union is a stranger to the collective bargaining agreement in issue in these proceedings and has no standing to complain against any of the defendants.

10. Answering Paragraph 9 of the complaint, this answering defendant admits the allegations contained therein.

Further answering Paragraph 9 of the complaint, this answering defendant alleges that the Brotherhood of Railroad Trainmen has represented the employees in the class or craft of switchmen since 1903 or earlier and has been continuously recognized by the defendant railroad as the exclusive bargaining agent for the employees since that time. The defendant Brotherhood of Railroad Trainmen has continuously negotiated the terms and conditions of employment for the employees and is currently party to a comprehensive labor agreement containing provisions establishing wage rates, hours of work, health insurance, seniority rights, union security, and numerous other terms and conditions of employment. All individually named employee-plaintiffs are accepting the benefits of that employment contract.

11. Answering Paragraph 10 of the complaint, this answering defendant admits the allegations contained therein.

12. Answering Paragraph 11 of the complaint, this answering defendant admits the allegations contained therein.

13. Answering Paragraph 12 of the complaint, this answering defendant admits that the plaintiff union filed a

petition on November 18, 1966, requesting the National Mediation Board to hold an election among some of the employees represented by the Brotherhood of Railroad Trainmen, and that Exhibit "A", page 1 attached to the complaint is an accurate facsimile of that petition. This answering defendant denies that the information contained on Exhibit "A", page 1 is accurate or correct.

Further answering Paragraph 12 of the complaint, this answering defendant denies that the plaintiff union represents a majority of the employees within the craft or class of yard service employed on the defendant railroad.

Further answering Paragraph 12 of the complaint, this answering defendant denies any knowledge of the alleged fact that the National Mediation Board will hold an election among the employees on this railroad, and that the only knowledge which this answering defendant has concerning the plaintiff's petition, docketed as Case No. R-4895, is that the petition is on file and has been for over three months.

Further answering Paragraph 12 of the complaint, this answering defendant alleges that the National Mediation Board is not required to conduct an election upon request, but will conduct an election only if it finds that a legitimate question of representative status does in fact exist.

Further answering Paragraph 12 of the complaint, this answering defendant alleges that the enforcement of the union security provisions of the agreement is irrelevant to the issues raised in the election petition since membership in the petitioning labor organization is not required to support the petition. The petitioning union can support its election petition with written document called an "authorization card" signed by the individual employees which designates the petitioning union as their bargaining agent.

Further answering Paragraph 12 of the complaint, this answering defendant denies each and every remaining allegation contained therein.

14. Answering Paragraph 13 of the complaint, this answering defendant admits that the union security agreement originally signed between the Brotherhood of Railroad Trainmen and the defendant railroad on June 9, 1953, was modified by an agreement signed February 1, 1967, an accurate copy of which is attached to the complaint as Exhibit "B". The modified agreement was the product and result of several months of negotiations which commenced in October 1966 and which were completed on February 1, 1967. The modified agreement was sought by the defendant union because under a disputed application of the prior agreement some employees were accepting the benefits of the agreement but were not contributing to the support of the Brotherhood of Railroad Trainmen which is obligated by law to enforce its agreement for the benefit of all the employees, whether or not they hold membership in the Brotherhood.

Further answering Paragraph 13 of the complaint, this answering defendant admits that the relevant modifications of the agreement require membership in the Brotherhood of Railroad Trainmen for all employees who work exclusively in yard service. However, it permits membership in any other union holding a contract with the defendant railroad if the employee has a contract or seniority right to work in classes of service other than yard service, thus complying with the provisions and policy of the Railway Labor Act relating to intercraft mobility.

Further answering Paragraph 13 of the complaint, this answering defendant alleges that the modifications to the union security agreement were added after a careful study of the law by both parties to the contract, particularly the

relevant provisions of the Railway Labor Act, the decision of the Supreme Court of the United States in *Pennsylvania Railroad Co. v. Rychlik,* 352 U. S. 480 (1956), and the decision of the United States Court of Appeals for the Third Circuit in *Rohrer v. Conemaugh & Black Lick Railroad Co.,* 359 F. 2d 127 (1966).

Further answering Paragraph 13 of the complaint, this answering defendant denies each and every remaining allegation contained therein.

15. Answering Paragraph 14 of the complaint, this answering defendant admits that the Switchmen's Union of North America has no labor contract with the defendant railroad and it may not legally contract with the defendant railroad because the Brotherhood of Railroad Trainmen is the exclusive bargaining agent for the employees.

Further answering Paragraph 14 of the complaint, this answering defendant admits that membership in the plaintiff union alone, without holding membership in the defendant Brotherhood, will not satisfy the union security provisions of the modified agreement.

Further answering Paragraph 14 of the complaint, this answering defendant denies that the clause will require plaintiffs and others to cease being members of the Switchmen's Union since no such language appears in the agreement and such is contrary to fact.

Further answering Paragraph 14 to the complaint, this answering defendant alleges that exclusive jurisdiction to litigate the allegations relating to any construction or interpretation of the collective bargaining agreement was assigned by Congress to the National Railroad Adjustment Board.

Further answering Paragraph 14 of the complaint, this answering defendant denies each and every remaining allegation contained therein.

Verified Answer of Elmer L. Dirks

16. Answering Paragraph 15 of the complaint, this answering defendant admits that the modified union security agreement is effective March 1, 1967.

Further answering Paragraph 15 of the complaint, this answering defendant denies each and every remaining allegation contained therein.

17. Answering Paragraph 16 of the complaint, this answering defendant denies each and every allegation contained therein.

Further answering Paragraph 16 of the complaint, this answering defendant alleges that exclusive jurisdiction to determine whether conduct of the defendants affected or influenced any election result of a future election, if held, has been granted by Congress to the National Mediation Board.

18. Answering Paragraph 17 of the complaint, this answering defendant denies knowledge of any insurance benefits which depend upon membership in the Switchmen's Union of North America.

Further answering Paragraph 17 of the complaint, this answering defendant alleges that membership in the Brotherhood of Railroad Trainmen does not preclude membership in the Switchmen's Union of North America or in any other fraternal or social society.

Further answering Paragraph 17 of the complaint, this answering defendant denies each and every remaining allegation contained therein.

19. Answering Paragraph 18 of the complaint, this answering defendant denies each and every allegation contained therein.

20. Answering Paragraph 19 of the complaint, this answering defendant denies each and every allegation contained therein.

21. Answering Paragraph 20 of the complaint, this answering defendant admits that the individually named plaintiffs have seniority rights which are valuable and which have been established and protected by the contract negotiated by the Brotherhood of Railroad Trainmen pursuant to its legal obligation to represent all employees in the unit for which it is the exclusive bargaining agent.

Further answering Paragraph 20 of the complaint, this answering defendant alleges that any loss of these rights will be caused only by the failure of the individually named plaintiffs to fulfill their obligation to contribute to the support of the Brotherhood of Railroad Trainmen and will not be caused by any illegal conduct on the part of the defendants.

Further answering Paragraph 20 of the complaint, this answering defendant denies each and every remaining allegation contained therein.

22. Answering Paragraph 21 of the complaint, this answering defendant admits that the Switchmen's Union of North America is a labor organization as those words are used in the Railway Labor Act.

Further answering Paragraph 21 of the complaint, this answering defendant denies that the Switchmen's Union of North America is authorized to represent any of the employees of the defendant railroad.

Further answering Paragraph 21 of the complaint, this answering defendant admits that the Railway Labor Act prohibits a carrier from coercing its employees in their choice of bargaining agent except to the extent that the Act, as amended, permits a railroad and the authorized union to enter into an agreement whereby the employees who benefit from the contract may be required to maintain membership in the union authorized to negotiate

for the employees (Section 2, Eleventh; Title 45, USCA § 152, Eleventh).

Further answering Paragraph 21 of the complaint, this answering defendant denies that any violation of law was committed by the defendants.

23. Answering Paragraph 22 of the complaint, this answering defendant denies each and every allegation contained therein.

24. Answering Paragraph 23 of the complaint, this answering defendant denies each and every allegation contained therein.

Further answering Paragraph 23 of the complaint, this answering defendant alleges that the terms of the union security agreement complained against by the plaintiffs provides a multi-step appeal procedure under which an employee who desires to contest this obligation to join the defendant Brotherhood may ultimately have his case heard by a neutral referee selected by the employer, the union, and the employee. If these parties are unable to agree on a neutral, one is appointed by the National Mediation Board. Any employee found to have been wrongfully discharged has available an adequate and proper procedure to remedy such alleged wrong. Damages which flow from a wrongful discharge are readily ascertainable or regularly remediable through established procedures under the agreement and are not irreparable.

25. Answering Paragraph 24 of the complaint, this answering defendant denies each and every allegation contained therein.

Wherefore, this answering defendant prays that the Court deny any and all requested injunctive relief and enter an order dismissing the complaint with costs.

Dated at Chicago, Illinois, this 13th day of March, 1967.

Michael Greenfield,
228 North LaSalle Street,
Chicago, Illinois 60601,

Asher, Greenfield, Gubbins & Segall,
228 North LaSalle Street,
Chicago, Illinois 60601,

David Leo Uelmen,
211 West Wisconsin Ave.,
Milwaukee, Wisconsin 53203,

Goldberg, Previant & Uelmen,
211 West Wisconsin Ave.,
Milwaukee, Wisconsin 53203,

Attorneys for Defendant,
Elmer L. Dirks.

Milwaukee County, }
State of Wisconsin. } ss.

Elmer L. Dirks, being first duly sworn, on oath deposes and says that he is the General Chairman of the Brotherhood of Railroad Trainmen; that he makes this verification on his own behalf, and on behalf of the Brotherhood of Railroad Trainmen, being first duly authorized so to do; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the allegations contained therein stated on information and belief, and as to such allegations he believes it to be true.

Elmer L. Dirks.

(Jurat and affidavits of service omitted in printing.)

Verified Answer of Brotherhood of Railway Trainmen

IN THE UNITED STATES DISTRICT COURT.

* * * * * * * *

(Title Omitted in Printing.)

VERIFIED ANSWER.

Now comes the Brotherhood of Railroad Trainmen, an unincorporated association, by John J. Naughton, its attorney, and for Answer to the Verified Complaint for Injunction, Declaratory Judgment and Damages says:

First Defense.

1. It denies that this Court has jurisdiction of the Complaint under Section 1337, of Title 28, of the United States Code or under the Railway Labor Act as amended, or that this Court has any jurisdiction in the premises to enter any Declaratory Judgment under Section 2201, of Title 28, of the United States Code. This defendant denies that the contract complained of is in violation of the Railway Labor Act. Defendant admits that the defendant-railroad has its principal office in Chicago, Illinois within this District, and admits that the contract complained of was negotiated in Chicago, Illinois.

2. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1 through 6, inclusive, of the Complaint and therefore denies the same.

3. Answering paragraph 7, this defendant admits that some yard service employees of the defendant-railroad are members of the Switchmen's Union of North America, AFL-CIO, but is without knowledge or information sufficient to form a belief as to the number of such employees and therefore denies the allegations as to their number. Defendant further denies that said employees constitute

a class and further denies that the named plaintiffs will fairly represent the alleged class.

4. This defendant admits the allegations contained in paragraphs 8 and 9 of the Complaint.

5. Answering paragraph 10, defendant admits that defendants Luna, Chester and Chase would adequately represent the Brotherhood of Railroad Trainmen. This defendant avers that defendant Elmer L. Dirks is a General Chairman of, and a representative of the yard service employees of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Lines East, and is not an officer of the international union known as the Brotherhood of Railroad Trainmen.

6. It admits the allegations contained in paragraph 11 of the Complaint.

7. Answering paragraph 12, this defendant admits that a Petition was filed by the plaintiff Switchmen's Union and was docketed by the National Mediation Board as Case No. R-4895, but is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in paragraph 12 and therefore denies the same.

8. Answering paragraph 13, this defendant admits that a union shop agreement was signed on February 1, 1967 by the signatories shown on Exhibit B to the Complaint, alleges that Exhibit B speaks for itself, and denies all other allegations contained in paragraph 13 of the Complaint.

9. Answering paragraph 14, this defendant admits that plaintiff Switchmen's Union has no labor contract with defendant railroad, admits that Section 1 (b) of Exhibit B to the Complaint contains a proviso clause and admits that the effect of that clause is to require yardmen who

have no interchangeable rights to join the Brotherhood of Railroad Trainmen if the Brotherhood accepts them after they make application for membership and if they do not come within any provision of the agreement excusing such application for membership. All other allegations contained in paragraph 14 of the Complaint are denied.

10. Answering paragraph 15, this defendant admits that the said agreement is effective March 1, 1967 and denies all other allegations contained in said paragraph.

11. Answering paragraph 16, defendant denies all the allegations contained therein.

12. This defendant alleges that any insurance rights held by members of the Switchmen's Union are dependent upon their voluntary act in relinquishing their membership in the said union and not affected by the requirements of the contract set out in Exhibit B of the Complaint and denies all other allegations contained in paragraph 17.

13. Answering paragraphs 18 and 19, this defendant denies each and every allegation contained therein.

14. Answering paragraph 20, this defendant avers that it has over the years entered into agreements establishing seniority rights which are of value to the plaintiff yard service employees and that any loss of these rights would be caused by the act of the individual employee in refusing to join his collective bargaining representative.

15. This defendant admits that the plaintiff Switchmen's Union is a labor organization, denies that any provisions of Section 2 of the Railway Labor Act are here relevant or applicable and denies the remaining allegations contained in paragraph 21.

16. This defendant denies each and every allegation contained in paragraphs 22, 23 and 24.

Verified Answer of Brotherhood of Railway Trainmen

Second Defense.

The Complaint fails to state a claim upon which relief can be granted.

Third Defense.

The matters complained of involve the interpretation or application of the collective bargaining contract and under Section 3 First (i) or Section 3 Second of the Railway Labor Act, exclusive primary jurisdiction of such disputes is in the First Division of the National Railroad Adjustment Board or in a System Adjustment Board set up on the defendant railroad.

Fourth Defense.

This defendant avers that the contract complained of provides for a system of hearings and appeals, that it has never been applied in an individual case and therefore avers that plaintiffs have failed to exhaust their administrative remedies.

Wherefore, this defendant prays that this Honorable Court deny all the relief prayed for by the plaintiffs; that it dismiss the Complaint herein and that it award this defendant its costs.

John J. Naughton,
120 West Madison Street,
Chicago, Illinois 60602,
STate 2-5925,
Attorney for Defendant, Brotherhood of Railroad Trainmen, an unincorporated association.

State of Illinois, }
County of Cook. } ss.

Sam Vander Hei, being first duly sworn, on oath deposes and says that he is a Vice President of the Brotherhood of

Railroad Trainmen, an international, unincorporated labor association; that he is in charge of the Chicago office of the said Trainmen; that he has read the foregoing Answer and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated on information and belief and as to those matters he believes them to be true.

Sam Vander Hei.

(Jurat and affidavit of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT.

* * * * * * * * *

(Title omitted in printing.)

ANSWER OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation, defendant, by James P. Reedy and Thomas J. McDonnell, its attorneys, answering the Complaint of plaintiffs in the above-entitled cause:

Answering the Introductory Paragraph to the Complaint, this defendant denies the following:

> "This is a complaint for injunction, declaratory judgment and damages. This Court has jurisdiction of this complaint under United States Code, Title 28, Section 1337, conferring original jurisdiction upon this Court of any civil action or proceeding arising under any Act of Congress regulating commerce, the cause of action herein stated being one for the violation of certain of plaintiffs' rights under the Railway Labor Act, as amended, 45 U. S. C., 151, et seq. This Court has jurisdiction to grant the declaratory judgment herein prayed pursuant to Section 2201 of the Judicial Code, United States Code, Title 28, Section 2201."

Further answering the Introductory Paragraph to the Complaint, this defendant admits that it has its principal office in and operates railroad lines into and out of Chicago, Illinois, within this District.

Further answering the Introductory Paragraph to the Complaint, this defendant denies the following:

> "The contract which has been entered into, and which the defendants are threatening to apply, in violation of the Railway Labor Act, as hereinafter set forth, was negotiated at Chicago, Illinois, within this district."

1. Answering Paragraph 1 to the Complaint, this defendant admits the allegations therein contained.

2. Answering Paragraph 2 to the Complaint, this defendant admits the allegations therein contained.

3. Answering Paragraph 3 to the Complaint, this defendant admits the allegations therein contained.

4. Answering Paragraph 4 to the Complaint, this defendant admits the allegations therein contained.

5. Answering Paragraph 5 to the Complaint, this defendant admits the allegations therein contained.

6. Answering Paragraph 6 to the Complaint, this defendant admits the allegations therein contained.

7. Answering Paragraph 7 to the Complaint, this defendant alleges that it has no knowledge or information sufficient to form a belief as to the truth of the following allegations and it, therefore, neither admits nor denies the same:

> "The members of the Switchmen's Union of North America, AFL-CIO, who are employed as yard service employees by the defendant Chicago, Milwaukee, St.

Paul & Pacific Railroad Company, exceed 500 in number and constitute a class composed of persons so numerous as to make it impossible to bring them all before the court in person. The plaintiffs, W. L. Birkholz, Ray Granger, Thomas Foley, David Tucibat, Wayne Blackbur and Marvin Hoisington are members of this class who will fairly ensure the adequate representation of all members of the class for the purposes of this suit."

8. Answering Paragraph 8, to the Complaint, this defendant admits the allegations therein contained.

9. Answering Paragraph 9 to the Complaint, this defendant alleges that said paragraph does not pertain to it and it is, therefore, unnecessary that it answer same.

10. Answering Paragraph 10 to the Complaint, this defendant alleges that said paragraph does not pertain to it and it is, therefore, unnecessary that it answer same.

11. Answering Paragraph 11 to the Complaint, this defendant admits the allegations therein contained.

12. Answering Paragraph 12 to the Complaint, this defendant alleges that it has no knowledge or information sufficient to form a belief as to the truth of the following allegations and it, therefore, neither admits nor denies the same:

"On November 18, 1966, the plaintiff Switchmen's Union filed a petition with the National Mediation Board, accompanied by authorization cards in the Switchmen's Union signed by 718 employees of the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company, in which petition the Switchmen's Union alleged that it had been designated by a majority of the employees within the craft or class of yard service employee on the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company as their

representative for purposes of the Railway Labor Act and asking the National Mediation Board to so certify it, all as more fully appears from a copy of said petition marked Exhibit A attached hereto and made a part hereof. Said petition has been docketed by the National Mediation Board as Case No. R-4895 and the National Mediation Board will, within the course of the next few months, hold an election to determine whether the yard service employees of the said railroad desire to be represeented by the plaintiff Switchmen's Union or by the defendant Brotherhood of Railroad Trainmen."

13. Answering Paragraph 13 to the Complaint, this defendant admits that on February 1, 1967, the defendant Brotherhood of Railroad Trainmen and the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company entered into an agreement.

Further answering said Paragraph 13 to the Complaint, this defendant denies that said Agreement by its terms is in violation of Section 2, Third of the Railway Labor Act, as amended (45 U. S. C. 152 Third), in that said agreement requires all employees covered thereby as a condition of employment to become and remain members of the defendant Brotherhood of Railroad Trainmen within sixty days after the effective date of the agreement, without providing that as to all employees covered by said agreement membership in any other labor oragnization national in scope which admits to membership employees within the craft or class of engine, train, yard or hostlery service shall satisfy the requirement of membership as required by said agreement as is made mandatory by Section 2, Eleventh (c) of the Railway Labor Act, as amended.

14. Answering Paragraph 14 to the Complaint, this defendant denies the following:

"By the proviso clause at the end of Section 1(b) to said agreement all employees in the yard service are required to join and maintain membership in the defendant Brotherhood of Railroad Trainmen in that the Switchmen's Union does not have any labor contract with the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Lines East) and in that some of the yardmen employed by defendant railroad hold no interchangeable rights. The effect of this clause is to require all of the plaintiffs and all of the other members of the class they represent to cease being members of the plaintiff Switchmen's Union and become members of the defendant Brotherhood of Railroad Trainmen or be discharged from their employment with defendant railroad. Section 2, Eleventh (c) of the Railway Labor Act as amended grants all yard service employees the right to belong to any labor organization national in scope which admits yard service employees to membership. By denying plaintiffs this right, said agreement violates Section 2, Third and Eleventh of the Railway Labor Act, as amended."

15. Asnwering Paragraph 15 to the Complaint, this defendant denies the following:

"Said agreement by its terms is effective on March 1, 1967. Unless this Court enters a restraining order protecting the plaintiffs from loss of their jobs for failure to join the defendant Brotherhood of Railroad Trainmen, the plaintiffs will be denied their right under the Railway Labor Act to join and be members of the labor organization of their free choice without coercion or restraint by their employer."

16. Answering Paragraph 16 to the Complaint, this defendant denies the following:

"The defendant Brotherhood of Railroad Trainmen and the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company entered into said agreement for the purpose of influencing the results of the election to be conducted by the National Mediation Board in favor of the defendant Brotherhood of Railroad Trainmen and to the disfavor of the plaintiff Switchmen's Union in violation of Section 2 of the Railway Labor Act, as amended."

17. Answering Paragraph 17 to the Complaint, this defendant alleges that it has no knowledge or information sufficient to form a belief as to the truth of the following allegations and it, therefore, neither admits nor denies the same:

"Many of the plaintiffs and the class they represent hold valuable insurance rights which depend on their continued membership in the plaintiff Switchmen's Union, in that approximately 60 of the yard service employees in the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company are insured in the Equitable Life Assurance Society under Policy ADSD 16222 isued to them as members of the plaintiff Switchmen's Union and some others are insured under Aetna Group Policy 7-47350, also issued to them as members of the plaintiff Switchmen's Union, all of which constitute valuable property rights which will be lost if they are required to comply with the terms of the above described agreement dated February 1, 1967, which requires them to join the defendant Brotherhood of Railroad Trainmen."

18. Answering Paragraph 18 to the Complaint, this defendant denies the following:

"The defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company has threatened to discharge

the plaintiffs and the members of the class they represent and each of them if they do not join and remain members of the defendant Brotherhood of Railroad Trainmen, all of which threats are in violation of Section 2 of the Railway Labor Act, as amended."

19. Answering Paragraph 19 to the Complaint, this defendant denies the following:

"The requirement that the plaintiffs and the other members of the class they represent must join and maintain membership in the defendant Brotherhood of Railroad Trainmen as a condition of employment deprives said persons and each of them of the right to join and remain members of the union of their own choice in that said plaintiffs and the other members of the class they represent desire to belong only to the plaintiff Switchmen's Union and cannot afford to pay initiation fees and dues to two unions."

20. Answering Paragraph 20 to the Complaint, this defendant denies the following:

"Each of the plaintiffs and each of the other members of the class they represent has seniority rights entitling him to preferential employment by the defendant railroad which constitute valuable property rights which will be lost in the event of a discharge for failure to join the defendant Brotherhood of Railroad Trainmen as required by said agreement of February 1, 1967."

21. Answering Paragraph 21 to the Complaint, this defendant denies the following:

"The plaintiff Switchmen's Union of North America is a labor organization engaged in representing employees in yard service on carriers throughout the United States, and as such it and its members are pro-

tected by Section 2 of the Railway Labor Act, as amended, from acts of carriers, including the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company, which interfere with or coerce employees, including the plaintiff employees, in the exercise of their right to join and designate the Switchmen's Union as their representative."

22. Answering Paragraph 22 to the Complaint, this defendant denies the following:

"The membership of the plaintiff employees in the plaintiff Switchmen's Union constitutes a valuable contract and property right of each of the plaintiffs and the conduct of each of the defendants, Brotherhood of Railroad Trainmen and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, has unlawfully interfered with such contract and property rights."

23. Answering Paragraph 23 to the Complaint, this defendant denies the following:

"The conduct of the defendant Brotherhood of Railroad Trainmen and the defendant Chicago, Milwaukee, St. Paul & Pacific Railroad Company has caused and threatens to cause each of the plaintiffs irreparable injury for which no remedy in damages is available."

24. Answering Paragraph 24 to the Complaint, this defendant denies the following:

"The conduct of each of the defendants, Brotherhood of Railroad Trainmen and the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, has caused the plaintiff Switchmen's Union of North America damages in that employees on the defendant railroad and other employees on all railroads where the Brotherhood of Railroad Trainmen hold contracts have become afraid that they will lose their jobs unless they cease being

members of the Switchmen's Union and join the defendant Brotherhood of Railroad Trainmen, which has caused the plaintiff Switchmen's Union damages in the sum of One Hundred Thousand Dollars."

Further answering plaintiffs' Complaint, this defendant denies:

1. That this Court should issue a temporary restraining order pending hearing on the action for preliminary injunction and issue a preliminary injunction pending hearing on the merits and then a permanent injunction restraining the defendants, and each of them, and their officers, agents, servants and representatives from discharging or threatening to discharge the plaintiffs or any other employee of the defendant railroad for failure to join to maintain membership in the defendant Brotherhood of Railroad Trainmen so long as he maintains membership in the plaintiff Switchmen's Union of North America.

2. That this Court should declare that the provision of the proviso to Section 1(b) of the agreement dated February 1, 1967, between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and the Brotherhood of Railroad Trainmen violates Section 2, Eleventh (c) of the Railway Labor Act, as amended, and hence is null and void and of no effect, in that membership in the Switchmen's Union satisfies the requirement of membership in a labor organization national in scope even though the Switchmen's Union holds no labor contract with the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and even though some yard service employees do not hold interchangeable rights.

3. That the Court should award plaintiff Switchmen's Union of North America damages in the sum of One Hundred Thousand Dollars against the defendants, Brotherhood of Railroad Trainmen and Chicago, Milwaukee, St. Paul & Pacific Railroad Company and each of them.

4. That this Court should award the plaintiffs attorney's fees, costs, expenses and such other and further relief as the case may require.

Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, a corporation,

Defendant,

By James P. Reedy,
Thomas J. McDonnell,
Its Attorneys.

James P. Reedy &
Thomas J. McDonnell,
888 Union Station Bldg.,
Chicago, Ill.,
CE 6-7600.

(Acknowledgment of service omitted in printing.)

[1*] IN THE UNITED STATES DISTRICT COURT.

* * * * * * *

(Title omitted in printing.)

TRANSCRIPT OF PROCEEDINGS

had at the hearing of the above-entitled cause before the Hon. Julius J. Hoffman, one of the judges of said court, sitting in his court room in the United States Court House at Chicago, Illinois, commencing on the 3rd day of April, A. D. 1967, at the hour of 2:00 o'clock p. m.

[2] Present:

Mr. Lee Leibik, 343 South Dearborn St., Chicago Illinois, on behalf of plaintiffs;

Mr. David Leo Uelmen, 211 West Wisconsin Avenue, Milwaukee, Wisconsin 53203; Mr. Michael Green-

* Numbers in brackets in outer edge of text indicate page numbers of transcript of record.

field and Mr. Lester Asher, 228 North LaSalle Street, Chicago, Illinois, on behalf of defendant, Elmer L. Dirks;

Mr. John J. Naughton, 120 West Madison Street, Chicago, Illinois, on behalf of defendant, Brotherhood of Railroad Trainmen;

Mr. James P. Reedy, 888 Union Station, Chicago, Illinois, on behalf of defendant, Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

[3] The Clerk: 67 C 285, W. L. Birkholz et al. v. Elmer L. Dirks et al., hearing on motion for preliminary injunction. There is also hearing on Plaintiffs' objection to defendants' interrogatories.

The Court: Good afternoon, gentlemen.

* * * * * * *

[7] We will proceed first on the question of jurisdiction which has been attacked in the answer.

* * * * * * *

The Court: Now the defendants here have raised certain challenges to the court's jurisdiction. There has been no motion to dismiss made; instead, as is equally proper, the defenses are raised in the answers and also in the briefs.

Of course, where jurisdiction is attacked, the court owes an obligation to determine the matter of jurisdiction before going into any other issues. The Brotherhood has raised the jurisdictional challenge in opposition to the [8] motion for preliminary injunction as well as in its answer, and it raised it in its brief as well as in its answer, and the defendant Dirks has raised another such challenge.

It appears that this is an action wherein the plaintiffs challenge the legality of the union shop clause in a bargaining agreement entered into by the defendant Brother-

hood and the defendant Railroad. This clause requires among other things that all yardmen employed by the railroad except those holding interchangeable rights must become members of the Brotherhood of Railroad Trainmen. The individual plaintiffs are yardmen employed by the railroad and were members of the plaintiff Swithmen's Union on March 1st, 1967, when the challenged agreement became effective. They assert that a union shop clause which does not recognize their affiliation with the SUNA as satisfying the union membership requirement is invalid under the Union Security Agreements Amendment to the Railway Labor Act, 45 U. S. C., Section 152, eleventh (c).

The Brotherhood asserts that any such issue is a matter within the exclusive primary jurisdiction of the National [9] Railroad Adjustment Board, First Division, and they cite *United Railroad Operating Crafts v. Pennsylvania Railroad,* 212 F. 2d 938, a case decided by this circuit in 1954. In that case the Seventh Circuit held that the interpretation of a phrase in a labor contract was within the exclusive jurisdiction of the N. R. A. B., even though the phrase had statutory origin. The opinion, it seems to me, is quite clear on the point that the N. R. A. B.'s function was to interpret the phrase as it appeared in the labor contract and not that of interpreting the statute from which the phrase stemmed. Although it is true that the N. R. A. B. does have exclusive primary jurisdiction to interpret and apply bargaining agreements, it does not have jurisdiction to determine the validity of such contracts. *Brotherhood of Railroad Trainmen v. Howard,* 343 U. S. 768, 774 (1952); *Switchmen's Union of North America v. Ogden Union Railway and Depot Company,* 209 F. 2d 419, 421, Tenth Circuit, 1954.

It seems to me too plain to require discussion that the issue raised in this suit as to the validity of the contract [10] is not one which could be resolved by an interpreta-

tion of the challenged clause. Therefore, the District Court does have original jurisdiction over this issue.

The defendant Dirks asserts that the complaint alleges matters partially within the jurisdiction of the National Mediation Board. However, a resolution of the issues in this complaint will not require a determination of whether or not the SUNA represents a majority of the employees in the relevant class or craft or whether an election is to be conducted to determine this matter. Moreover, whether the railroad's yardmen are still able to select a new bargaining representative is not an issue here. It is not alleged that the union shop clause itself prohibits such activity. This jurisdictional challenge, then, cannot be recognized.

There is still the question of whether the court has jurisdiction over another aspect of the complaint, that being the allegation that the challenged union shop agreement was consummated for the purpose of influencing the [11] outcome of an allegedly imminent certification election.

The SUNA claims majority support of the railroad's yardmen and has petitioned the National Mediation Board to certify them as bargaining representatives of this service. No election for this purpose has been scheduled, but the plaintiffs allege that there will be one. Because this is a dispute between certain of the railroad's employees and their bargaining representative, this is not matter within the exclusive or primary jurisdiction of railroad administrative agencies. Instead it is, rather, a matter within the jurisdiction of the District Courts, the joinder of the defendant railroad notwithstanding. See, for example, *Rumbaugh v. Winifrede Railroad Company*, 331 F. 2d 530, 535-36, 538, Fourth Circuit, 1964. This was an opinion by Chief Judge Sobeloff.

Finally, I must observe the presence in this case of another issue which goes to the standing of the plaintiffs

to bring this action and is in that sense jurisdictional. The plaintiffs allege in their complaint that the SUNA is a union national in scope and properly designated within the terms of the Railway Labor Act. If that were [12] not the case, the plaintiffs have no standing to issue this challenge to the union shop clause for only membership as of March 1, 1967, in such a union could satisfy the membership requirements of a union shop clause, even under the plaintiffs' reading of Section 152-11th (c).

Despite the fact that the defendant railroad admits in its answer that the SUNA does qualify as a union national in scope and properly designated under the Railway Labor Act, the Brotherhood denies this in its answer. I would be inclined to suspect that this denial is not particularly well-founded. However, if it is still an issue at the trial, it will be resolved by the court.

The purpose of these remarks, gentlemen, has been to make clear the court's opinion that it does not have jurisdiction to determine this matter of whether SUNA is a properly designated union, national in scope. It is a very simple matter. Either that union has already been so recognized through the administrative procedures prescribed in Section 3 of the Railway Labor Act or it is [13] not such a union. See *Pennsylvania Railroad v. Rychlik*, 352 United States 480, 494-497, 1957.

Now I have ordered the trial on the merits here consolidated with the hearing on the application for a preliminary injunction, a procedure authorized by Rule 65 (a) (2) of the Federal Rules of Civil Procedure. The purpose of this note is to point out that no preliminary injunction is warranted in this case. Such relief is sought to prevent the defendant Brotherhood of Railroad Trainmen from seeking to enforce its union shop contract with the railroad, under which the plaintiffs and their class must join the Brotherhood or be discharged. Moreover, the plaintiffs assert that a certification election is immi-

nent and that the election will result in a majority for the Swithchmen's Union, which will then replace the Brotherhood as the bargaining agent. Thus, the plaintiffs also claim that the union shop contract is an attempt to force the yardmen to join the Brotherhood, thereby influencing the outcome of the pending election.

The reason no injunction is necessary at this time is that even if what the plaintiff says is true, the contract [14] gives the plaintiffs and their class until the end of April to join the union. There is no imminent threat of harm, then, especially because no date for the described election has been set.

* * * * * * *

[19] Mr. Naughton: For the record I would state that if there is any issue as to the national scope of the Switchmen's Union, we would stipulate they are national in scope in order to remove that from this case.

Thank you, your Honor.

The Court: All right.

* * * * * * *

[22] Thereupon the Plaintiffs, to maintain the issues in their behalf, presented the following evidence, to wit:

NEIL P. SPEIRS,

a witness called by and on behalf of plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination, by Mr. Leibik.

Q. Will you state your full name, please?

A. Neil P. Speirs.

[23] Q. What is your present position, Mr. Speirs?

A. President of the Switchmen's Union of North America.

Q. Where do you live, Mr. Speirs?

A. Buffalo, New York.

Q. Can you briefly relate your previous railroad experience?

A. I commenced my railroad career in 1937 with the Southern Pacific Company as a switchman.

Q. Was this shortly after your graduation from the University of Idaho?

A. Yes. After entering the railroad service, prior to 1950 I became local chairman for the Switchmen's Union at San Francisco, California, on the Southern Pacific Railroad. Later, in 1951, I was elected General Chairman for the Switchmen's Union on the Southern Pacific Railroad. In 1955 I was elected as a Vice President of the Switchmen's Union and assigned to the Western Territory. In 1959 I was elected as President of the Switchmen's Union and have served in that capacity since that date.

Q. Have you also served on various national wages [24] and rules committees involving all of the operating organizations?

A. Yes, I have served on several committees and recently, in 1960, I was assigned to represent our union and did represent our union as president in the National Rules Dispute which lasted for a period of some four years.

Q. Did that dispute involve all of the five operating organizations?

A. Yes, that was a cooperative effort on the part of the five operating brotherhoods.

Q. Mr. Speirs, is the Switchmen's Union of North America the oldest operating union affiliated with the AFL-CIO—that, the oldest railroad operating union?

A. Yes. We have been affiliated since 1906.

Q. 1906?

A. Yes.

Q. Are you also members of the Railway Labor Executives Association?

A. Yes. We are a charter member of the Railway Labor Executive Association and have held continuous membership since 1926.

[25] Q. Was the Railway Labor Executives Association formed in 1926?

A. Yes.

Q. Are all of the standard railway labor organizations members of the Railway Labor Executive Association?

A. Yes. I think there is one exception at the present time.

Q. What are the specific functions of the Railway Labor Executives Association?

A. Well, the Railway Labor Executive Association is an association of the presidents of the standard railway labor organizations. Their function is primarily that of setting policy in the railroad labor field. They determine to a great extent the legislative programs on a national basis which railway labor will follow. They handle to a large extent all matters dealing with the Interstate Commerce Commission insofar as they relate to railroad mergers, discontinuance of passenger trains and in general matters of interest to railway labor which take on national significance.

Q. Including legislation in Congress?

[26] A. Yes.

Q. Do they maintain a Washington office, Mr. Speirs?

A. Yes, we have headquarters and an office staff which is maintained in Washington, D. C.

Q. How is this organization funded?

A. It is funded on the basis of an assessment on each organization based on the per capita membership.

Q. So that the switchmen who are members of the Switchmen's Union of North America on the Milwaukee Railroad, for example, pay part of their dues to this national organization of railroad organizations?

A. That is right. They are in the per capita assessment.

Q. Are there any other cooperative efforts in which you have engaged with the other four operating organizations in the railroad industry?

A. Well, we engage as an example on national dispute committees which involve national agreements. We engage in various——

Q. One moment. On this national disputes committee, is that a committee made up of all of the five standard [27] railway operating organizations?

A. Yes, insofar as it pertains to certain agreements which are negotiated and in effect with the five organizations.

Q. I see. Will you continue?

A. We also participate in various types of negotiations and often in various types of litigation where it is of interest to the five operating brotherhoods, and we have in a general sense cooperated and participated in these matters over a period of years.

Q. Are you familiar with the National Rules Movement of 1959 which culminated in litigation in 1962?

A. Yes. In that particular movement where the railroads had served notice on us to change existing rules.

Q. Now by notice on you do you mean the Switchmen's Union of North America, or do you mean all of the five operating organizations?

A. All of the five operating organizations. The Switchmen's Union with the other four operating unions participated jointly in that movement and participated in the [28] cost which emanated from that movement on a joint basis.

• • • • • • • •

[31] By Mr. Leibik:

Q. In that National Rules Movement, Mr. Speirs, did you retain counsel along with the other four operating organizations?

A. Yes, we did.

Q. And they represented all of the operating organizations in this litigation?

A. Yes.

• • • • • • • •

Q. Have you ever, Mr. Speirs, appointed a repr-
[32] sentative of the Switchmen's Union of North America to participate in Presidential Rules Commissions?

A. Yes, I have.

Q. Who was that appointee?

A. Vice President James Fallon.

Q. You designated him a member of the Presidential Rules Commission?

A. Yes.

Q. Did the other standard railway operating organizations have membership on that Commission?

A. They did.

Q. Did they work harmoniously and cooperatively?

A. They did.

• • • • • • • •

[33] By Mr. Leibik:

Q. Did you participate on Emergency Board No. 154, Mr. Speirs?

A. I did.

Q. Along with the other four standard railway operating organizations?

A. I did, yes.

• • • • • • • •

[34] By Mr. Leibik:

Q. Mr. Speirs, did you participate in selecting the members of the five standard railway labor organizations on Arbitration Board No. 282?

A. Yes.

Q. Whom did you designate as the representative of the Yard Service Employees on that arbitration board?

A. Well, the vice president of the Brotherhood of Railroad Trainmen was a designated member to represent us on that board, the Switchmen's Union.

Q. Approximately how many members did the Switchmen's Union of North America have on the Milwaukee Railroad on November 14, 1966?

A. Approximately 500.

[35] Q. When was the Switchmen's Union of North America organized?

A. In 1894.

Q. Is the Switchmen's Union of North America national in scope?

A. We have always been national in scope and so recognized.

Q. Has your organization been organized in accordance with the provisions of the Railway Labor Act?

A. Yes, we have.

Q. On how many railroads throughout the United States does the Switchmen's Union of North America hold labor contracts?

A. Approximately thirty.

Q. And you are organized on a craft or class basis?

A. That is correct.

Q. Representing yard service employees?

A. Yes.

Q. Do you admit to membership railroad employees who are working in yard service on all the carriers on which you hold contracts?

A. Yes.

[36] Q. Does the Switchmen's Union of North America participate in the selection and designation of the members of the First Division of the National Railroad Adjustment Board?

A. Yes, we do.

Q. Does your union pay the salary and expenses of the member designated by your organization to serve as its member on the National Railroad Adjustment Board, First Division?

A. Yes.

Q. That is pursuant to Section 3 of the Railway Labor Act which provides that members shall be selected and designated by the national labor organization of the employees, is that correct?

A. That is correct.

Q. How long have you so participated in the selection and designation of the First Division of the National Railroad Adjustment Board?

A. Since amendment to the Railway Labor Act which established the National Railroad Adjustment Board, which was in 1934.

Q. Do the labor members on the First Division of [37] the National Railroad Adjustment Board vote as a block?

A. Yes, that is their policy in executive sessions.

Q. The Switchmen's Union of North America is one of the five standard railway labor organizations in the operating end of the industry, is that correct?

A. That is correct.

Q. Could you identify the other four standard railway labor organizations in the industry?

A. The Brotherhood of Locomotive Engineers, the Order of Railroad Conductors and Brakemen, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Railroad Trainmen and the Switchmen's Union of North America.

Q. How long has the Switchmen's Union of North America had established locals on the Chicago, Milwaukee, St. Paul & Pacific Railroad Company?

A. Our first local was established on the Milwaukee Railroad at Milwaukee, Wisconsin, in 1899 known as [38] Local 10 and has continued in existence since that date.

Q. Now you have, I take it, Mr. Speirs, union shop agreements with all of the railroads across the country that you have a collective bargaining relationship with, is that correct?

A. Yes, to my knowledge we do have.

Q. Do your union shop agreements contain the exact language of Sec. 152 11th(c) of the Railway Labor Act

as an exception to the requirement of membership in your union?

A. Yes, that is true.

• • • • • • • •

[45] By Mr. Leibik:

Q. You state, Mr. Speirs, that you have union shop agreements on approximately thirty railroads throughout the country.

A. Yes.

Q. That is thirty?

A. Yes.

• • • • • • • •

[51] By Mr. Leibik:

Q. Mr. Speirs, what, if anything, took place on or about November 14, 1966, with respect to the employees in yard service on the Milwaukee Railroad?

A. Well, on that date we petitioned for the services of the National Mediation Board to investigate the representation dispute among the yard employees on the Milwaukee Railroad.

Mr. Leibik: May I have marked for identification as Plaintiffs' Exhibit No. 4 an application for investigation of representation dispute.

(Said document was thereupon marked Plaintiffs' [52] Exhibit 4 for identification.)

By Mr. Leibik:

Q. I hand you, Mr. Speirs, this document marked for identification as Plaintiff's Exhibit 4 and ask you if this is a true copy of the original document?

A. Yes, that is a true copy. My signature is affixed to it.

Q. What is this document, Mr. Speirs?

A. That is a petition for the services of the National Mediation Board to investigate a dispute on the Milwaukee Railroad.

Mr. Leibik: I offer Plaintiffs' Exhibit No. 4 in evidence.

Mr. Reedy: I have no objection to this, your Honor.

Mr. Uelman: If the Court please, we do not object to the authenticity of the document nor do we object to the receipt of the document as being one that is on file with the National Mediation Board.

However, we would not concede or agree that the [53] facts stated in the document are true and correct, and, in fact, we deny them.

The Court: May I inquire of you, Counsel for the Plaintiff, is Plaintiffs' Exhibit 4 for identification offered merely to show that such a document is on file or was on file with the National Mediation Board?

Mr. Leibik: That such a document is on file with the National Mediation Board.

The Court: With that limitation, then, and with no objection by any defendant, the court will admit Plaintiffs' Exhibit 4 for identification as Plaintiffs' Exhibit 4.

(Said document, so offered and received in evidence, was marked PLAINTIFFS' EXHIBIT 4.)

Mr. Leibik: May I have marked for identification as Plaintiff's Exhibit 5 the letter from the National Mediation Board, Executive Secretary, Thomas A. Tracy, to Mr. S. W. Amour, Assistant to the Vice President, Personnel, Chicago, Milwaukee, St. Paul & Pacific Railroad, [54] and Mr. Charles Luna, President, Brotherhood of Railroad Trainmen.

(Whereupon said document was marked Plaintiffs' Exhibit 5 for identification.)

By Mr. Leibik:

Q. Mr. Speirs, I hand you what has been marked for identification as Plaintiffs' Exhibit No. 5 and ask you if that is a true and correct copy of a letter received from Mr. Thomas Tracy?

A. Yes. I received a carbon copy of this letter. It is a true and correct copy.

* * * * * * *

[55] The Court: With no objection by any defendant, Plaintiffs' Exhibit 5 for identification may be admitted into evidence as Plaintiffs' Exhibit 5.

(Said document, so offered and received in evidence, was marked PLAINTIFFS' EXHIBIT 5.)

* * * * * * *

[57] May I have this document marked as Plaintiffs' Exhibit 6 for identification, which is a letter from the National Mediation Board to Mr. Amour, Mr. Luna and Mr. Speirs dated December 8, 1966.

(Whereupon said document was marked Plaintiffs' Exhibit 6 for identification.)

By Mr. Leibik:

Q. Mr. Speirs, I hand you this document which has been marked for identification as Plaintiffs' Exhibit No. 6 and ask you whether or not this is a true and correct copy of the letter you received on or about December 8, 1966, from the National Mediation Board?

A. Yes, it is.

Mr. Leibik: I offer Plaintiffs' Exhibit No. 6 in evidence, your Honor.

Mr. Naughton: We have no objection.

[58] The Court: With no objection, Plaintiffs' Exhibit No. 6 for identification may be admitted into evidence as Plaintiffs' Exhibit 6.

(Said document, so offered and received in evidence, was marked PLAINTIFFS' EXHIBIT 6.)

By Mr. Leibik:

Q. Mr. Speirs, have you received any further communication from the National Mediation Board subsequent to

the docketing of this representation dispute on December 8, 1966?

A. No, not to my knowledge. Or may I change that answer and say yes, that I have.

* * * * * * *

Q. Mr. Speirs, did you accompany your petition with authorization to act cards, the petition you filed with the National Mediation Board?

A. Yes, we accompanied it with signed authorization cards.

* * * * * * *

Mr. Leibik: May I have marked for identification as Plaintiffs' Exhibit No. 7 a document entitled, "Representative Authorization"?

(Whereupon said document was marked Plaintiffs' Exhibit 7 for identification.)

[60] By Mr. Leibik:

Q. Mr. Speirs, I hand you what has been marked for identification as Plaintiffs' Exhibit No. 7, a document entitled, "Representation Authorization," and I ask you to identify this document?

A. This is a representation authorization card which our organization has signed by members who wish to be represented by the Switchmen's Union and it is used as affirmative evidence to submit to the National Mediation Board that there is a representation dispute on the property.

Mr. Leibik: I offer what has been marked for identification as Plaintiffs' Exhibit 7 into evidence.

Mr. Uelmen: We have no objection.

Mr. Reedy: No objection.

Mr. Naughton: None.

The Court: With no objection by any defendant, Plaintiffs' Exhibit 7 for identification may be admitted into evidence as Plaintiffs' Exhibit 7.

(Said document, so offered and received in evidence, was marked PLAINTIFFS' EXHIBIT NO. 7.)

* * * * * * *

[63] Mr. Leibik: May I have this marked as Plaintiffs' Exhibit No. 8, a memorandum of agreement between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and the Brotherhood of Railroad Trainmen covering the union shop dated the 9th day of June, 1953.

(Said document was thereupon marked Plaintiffs' Exhibit 8 for identification.)

By Mr. Leibik:

Q. Mr. Speirs, I hand you what has been marked for identification as Plaintiffs' Exhibit No. 8, a document entitled, "Union Shop Agreement." Can you identify that document?

A. Well, this is an agreement between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and the Brotherhood of Railroad Trainmen covering union shop. It is dated the 9th day of June, 1953.

Q. Are you familiar with its provisions?

A. Yes, I am.

Q. Do you know of any instance where a member of [64] the Switchmen's Union employed on the Milwaukee Railroad under this union shop agreement has ever been discharged for non-compliance with this agreement?

A. No, I do not.

Mr. Leibik: I offer Plaintiffs' Exhibit No. 8 into evidence.

Mr. Reedy: The Milwaukee has no objection, your Honor.

Mr. Uelmen: Your Honor, we have no objection to the document. It is a matter of checking it to see whether it is identical to the agreement.

The Court: You can do it after this session.

Mr. Uelmen: Yes, your Honor.

The Court: Subject to your checking it, the court will admit Plaintiffs' Exhibit 8 for identification as Plaintiffs' Exhibit 8, and that with no objection by any of the parties unless some substantial reason for objection is made later.

(Said document, so offered and received in evidence, [65] was marked PLAINTIFFS' EXHIBIT 8.)

Mr. Leibik: May I have marked as Plaintiffs' Exhibit 9 the agreement between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and the Brotherhood of Railroad Trainmen dated the 1st day of February, 1967.

(Whereupon said document was marked Plaintiffs' Exhibit 9 for identification.)

* * * * * * *

By Mr. Leibik:

Q. Will you identify this document, please, Mr. Speirs?

A. That is an agreement between the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and the [66] Brotherhood of Railroad Trainmen covering union shop.

The Court: Dated when?

Mr. Leibik: Dated February 1, 1967.

By Mr. Leibik:

Q. Does this agreement purport to amend the previous existing union shop agreement on the Milwaukee Railroad?

A. Yes, it does.

Mr. Leibik: I offer into evidence Plaintiffs' Exhibit 9.

Mr. Uelmen: We have the same comment with respect to Exhibit 9 as we had to Exhibit 8.

The Court: With no objection——

Mr. Naughton: If your Honor please, I have no objection but Mr. Speirs identified this as being applicable to the whole railroad while on its face it shows it is only applicable to lines east.

The Court: Only to what?

Mr. Naughton: Only to lines east. The railroad is divided into two segments, lines east and lines west. [67] The Court: He said it was an agreement with the railroad and the Brotherhood dated February 1st, 1967.

Mr. Leibik: That is quite correct.

The Court: What it provides we will determine later. Even if what you say is true, you have no objection?

Mr. Naughton: No, your Honor.

The Court: All right. With no objection, Plaintiffs' Exhibit 9 for identification may be admitted into evidence as Plantiffs' Exhibit 9 subject to checking for authenticity or authentication.

(Said document, so offered and received in evidence, was marked PLAINTIFFS' EXHIBIT 9.)

By Mr. Leibik:

Q. Mr. Speirs, how did this agreement of February 1, 1967, come to your attention?

A. Well, it was mailed to me by one of our officers, one of the local union officers on the Milwaukee Railroad.

* * * * * * * *

By Mr. Leibik:

Q. Mr. Speirs, you stated that your membership on the Milwaukee Railroad on November 14, 1966, was approximately 500?

A. That is correct.

* * * * * * * *

By Mr. Leibik:

Q. Are you receiving any dues from members of the Switchmen's Union on the Chicago, Milwaukee, St. Paul & Pacific Railroad Company?

A. Yes, we are.

Q. Has there been any loss of dues income since [69] the effective date of the agreement in question, February 1, 1967?

A. Yes, there has been a loss of income from approximately 400 employees who were former members of the Switchmen's Union on the Milwaukee Railroad.

* * * * * * * *

[71] (Whereupon at 4:40 o'clock p. m. an adjournment was taken to 10:00 o'clock a. m. the following day, April 4, 1967.)

* * * * * * * *

[72] Before Judge Hoffman,
April 4, 1967.

The hearing was resumed, pursuant to adjournment, at 10:00 o'clock a.m.

* * * * * * * *

[73] The Clerk: 67 C 285, W. L. Birkholz, et. al. v. Elmer L. Dirks, et. al., further hearing on plaintiffs' motion for a preliminary injunction.

The Court: No, it is on trial, including that.

The Clerk: On trial.

The Court: That is included in it.

* * * * * * * *

[74] **NEIL P. SPEIRS,**

a witness called by and on behalf of the plaintiffs, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

Mr. Leibik: We had concluded our direct examination of Mr. Speirs.

The Court: Is there any cross-examination of this witness?

Mr. Uelmen: Yes, your Honor.

The Court: Mr. Uelmen.

Cross-Examination, by Mr. Uelmen.

Q. Mr. Speirs, has the Switchmen's Union of North America ever been certified by the National Mediation

Board to represent any employees on the Chicago, Mil-
[75] waukee, St. Paul & Pacific Railroad Company lines east?

A. Not certified by the National Mediation Board, no.

Q. Has the Switchmen's Union of North America ever had a written collective bargaining agreement with the Chicago, Milwaukee, St. Paul & Pacific Railroad?

A. To my knowledge we at one time prior to the Railway Labor Act represented switchmen on a yard basis and some of those switchmen were on the Milwaukee Railroad.

Q. By prior to the Railway Labor Act do you mean prior to 1926?

A. Yes.

Q. At any time subsequent to 1926 did the Switchmen's Union of North America have a written collective bargaining agreement with the Milwaukee Road?

A. Not to my knowledge.

Q. Do you know of your own knowledge that the Brotherhood of Railroad Trainmen has a written collective bargaining agreement with the Milwaukee Road?

[76] A. I understand that they have, yes.

Q. And do you know that the collective——

The Court: You understand they have?

The Witness: They have, yes.

By Mr. Uelmen:

Q. Do you know, Mr. Speirs, whether that bargaining agreement includes the unit of yardmen?

A. Yes.

Q. Do you know that the Brotherhood of Railroad Trainmen on the Milwaukee Road has a general grievance committee?

A. Yes, I understand that structure.

Q. I believe you were general chairman at one time of a Switchmen's Union Grievance Committee, General Grievance Committee, is that true?

A. That is correct.

Q. Does the Switchmen's Union of North America contribute any financial support to the General Grievance Committee of the Brotherhood of Railroad Trainmen on the Milwaukee Road?

A. We do not contribute cash towards that Committee, although we do absorb some of that Committee's expense by representing our members who otherwise would [77] have to be represented by the Brotherhood of Railroad Trainmen.

Q. Now, Mr. Speirs, is it your testimony that the Switchmen's Union of North America represents its members on the Milwaukee Road in negotiations with the Milwaukee Road?

A. Insofar as handling what we term minor disputes, grievances, and so forth, yes, we represent our members.

Q. Do you know of any minor disputes that the Switchmen's Union of North America has handled on the Milwaukee Road in the past year?

A. Yes. I have been familiar with at least two or three reinstatement cases which we have handled, and, as a matter of fact, which we had to take to court to effect that reinstatement.

Q. Are you talking about Mr. Fautek and Mr. Bushey?

A. I believe those are the names.

Q. Are those the only two reinstatement cases that you recall?

A. Yes. I would say those are the only two that I recall. I would not state that those are the only two that have been handled.

Q. Now when you say "handled," Mr. Speirs, with [78] whom do you handle those reinstatement cases?

A. We handle them initially with the designated local officer which is designated by the railroad and then we handle them on appeal by the highest designated officers of the railroad.

Q. And when you say we handle them, specifically who are you referring to from the Switchmen's Union?

A. I am referring to our local officers and to our vice presidents who may be assigned to handle these grievances on appeal.

Q. Now when you talk about minor disputes, Mr. Speirs, are you referring specifically to discipline cases of employees?

A. And disputes which arise over the interpretation of agreements.

Q. Do you personally handle any disputes over the interpretation of agreements on the Milwaukee Road?

A. Pardon me. Yes. I don't personally but our organization does.

Q. You don't personally?

[79] A. No, but our organization does.

Q. Who handles them for your organization?

A. Our local chairman will initiate the dispute over the interpretation of an agreement and if it is not settled with the local officer, it will then be appealed to a higher officer and in most instances, I assign a vice president to handle that particular case on appeal.

Q. Specifically what agreement are you referring to when you refer to interpretations of the agreement?

A. I am referring to the collective bargaining agreements which are in effect on the Milwaukee Railroad which include all of them.

Q. Are you referring to the bargaining agreement that exists between the Brotherhood of Railroad Trainmen and the Milwaukee Road?

A. That is correct.

Q. Does the Switchmen's Union negotiate any agreement with the Milwaukee Road?

A. No, we do not negotiate collective bargaining agreements.

[80] Q. Do you know whether the Switchmen's Union has requested the Brotherhood of Railroad Trainmen to

represent its members in disputes involving the contract with the Milwaukee Road?

Mr. Leibik: I am going to object to this question. I fail to see why this can be regarded as any appropriate line of inquiry on the issue of whether or not the union shop agreement is valid when it precludes a member of a qualified union from maintaining his membership in his choice of union.

The Court: What is the purpose?

Mr. Uelmen: The purpose is to establish, your Honor, that the sole collective bargaining agreement on this railroad is between the Brotherhood of Railroad Trainmen and the Milwaukee Road; that the Switchmen's Union does not have an agreement; they do not have the authority to represent employees on this railroad, and that line of examination.

Mr. Leibik: We will so stipulate, but this line of inquiry should more appropriately have been addressed to Congress in 1951. It has nothing whatsoever to do, it has [81] no relevancy to the issue here.

The Court: I will let the witness answer over objection and then I am going to have to recess. I see the lawyers have come in in connection with a motion and it is a motion which I have to decide.

The Witness: Would you restate the question?

The Court: Read the question to the witness.

(Question read by the reporter.)

By the Witness:

A. I recall one case resulting from a particular agreement which was negotiated by the Brotherhood of Railroad Trainmen whereby they precluded the Switchmen's Union from representing its members at an investigation.

The only alternative for that member of the Switchmen's Union to obtain representation was to request it

from the Brotherhood of Railroad Trainmen which I think was done in one or two isolated situations.

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[82] By Mr. Uelmen:

Q. Now, Mr. Speirs, other than the grievances which the Switchmen's Union may handle for its individual members on its property, does the Switchmen's Union of North America contribute any financial support to the General Grievance Committee of the Brotherhood of Railroad Trainmen on this property?

• • • • • • • •

By the Witness:

A. Well, if I understand your question correctly, we negotiate agreements which are applicable to the Milwau- [83] kee Railroad when we do it on a national basis such as vacation agreements, paid holiday agreements, and that is a joint endeavor in our agreements which are applicable on the Milwaukee Railroad.

By Mr. Uelmen:

Q. What do you mean by that as a joint endeavor?

A. Well, for instance, the vacation agreement was handled jointly by the five operating brotherhoods in a concerted effort where each organization participated and assumed its own proportion of expenses and so forth in arriving at these agreements which have application on the Milwaukee Railroad as well as other railroads.

Q. Are you referring to the June 1954 agreements?

A. No. I am referring to that agreement—I am referring to the national vacation agreement which was first negotiated in 1949.

Q. In other words, if I understand your testimony correctly, Mr. Speirs, the five operating brotherhoods each sent a representative to a national conference at which a [84] vacation agreement was negotiated for all of the railroads covered by that particular negotiations?

A. Yes.

Q. And I understand your testimony is that that is your financial contribution to the Brotherhood of Railroad Trainmen's General Grievance Committee on the Milwaukee Railroad?

A. Well, I would say that that agreement has application under the General Grievance Committee on the Milwaukee Railroad and therefore we did participate in negotiating the agreement which has application on the Milwaukee Railroad.

Q. Was the Brotherhood of Railroad Trainmen represented at that national conference?

A. Yes, they were also represented.

Q. Now other than that additional item, does the Switchmen's Union of North America contribute any financial support to the General Grievance Committee of the Brotherhood of Railroad Trainmen on the Milwaukee Road?

A. Not in areas other than I have stated.

Q. Do you know what the assessment is on the members of the Brotherhood of Railroad Trainmen on the Milwaukee Road to operate the General Grievance Committee?

[85] A. No, I would have no way of knowing what it was.

Q. You have no idea?

A. That is a matter——

The Court: You don't know. Is that it?

The Witness: That is right.

* * * * * * *

By Mr. Uelmen:

Q. Now I believe you testified that you had 500 members of the Switchmen's Union in November of 1966 on the Milwaukee Road?

A. Approximately, yes.

Q. Is that it approximately?

A. Yes.

Q. Do you know the exact number of members you had?

A. I recall, I think, 471 or in that area.

Q. From where did you obtain that figure?

A. From our International records.

Q. Did you have 471 in October of 1966?

[86] A. I wouldn't know exactly unless I checked the records.

* * * * * * *

By Mr. Uelmen:

Q. Did you check any of your records before you came to this trial?

A. No.

Q. Your memory, then, gives you the figure of 471 for November of 1966?

A. Yes.

Q. Do you know whether you had 471 members in August of 1966?

A. No.

* * * * * * *

[88] By Mr. Uelmen:

Q. Do you know how many members you did have in August of 1966?

A. No.

* * * * * * *

[93] Q. I am handling you what has been marked as Plaintiffs' Exhibit No. 7 which I believe is an authoriza-
[94] tion card used by the Switchmen's Union.

A. That is correct.

Q. Was that authorization card used on the Milwaukee Road in 1966?

A. Yes.

Q. To whom did you give those authorization cards?

A. To members and local officers of the Milwaukee Road who are employees of the Milwaukee Railroad.

Q. Did you give them to Mr. Van Heck?

A. Mr. Van Heck had these cards for distribution to the people I named.

Q. He already had them?

A. He secured them from our office, obtained them from our office.

Q. When did he secure them from your office?

A. Vice presidents always carry a supply of authorization cards. That is part of their equipment.

Q. Did he have to obtain an additional supply for the Milwaukee Road?

A. It is possible.

* * * * * * *

[99] **Cross-Examination**, by Mr. Naughton.

Q. Mr. Speirs, directing your attention to an exhibit which was a petition to the Mediation Board for a representation election on the Milwaukee Road, I ask you first was that an election just on lines east or did that include the entire Milwaukee Road?

A. It includes the entire Milwaukee Railroad.

Q. On that exhibit it says something like 718 authorization cards were submitted therewith, is that correct?

A. With the application.

Q. Were those authorization cards on both lines east and lines west?

A. They were.

Q. Could you tell me approximately how many were on lines east?

A. No, I couldn't.

Q. You talked about approximately 471 members who were dues-paying members to the Switchmen's Union of North America?

A. That is correct.

[100] Q. Does that mean that they send the International dues each month?

A. That does.

Q. Approximately how many of those 471 were on lines east?

A. I do not know.

Q. Yesterday you talked about losing 400 members, as I understand it, since this union shop contract was signed, is that correct?

A. Approximately, yes.

Q. That contract was signed on or about February 1st, is that correct?

A. Yes.

Q. Now how did you determine that those members were lost?

A. By a report from the International Secretary and Treasurer who makes a report to me on these affairs from the International Union.

Q. Did they stop sending in their International dues?

A. Yes.

Q. Have any of those members not sent in dues for two months?

A. I think that is a correct statement, yes, for [101] more than two months.

Q. For more than two months?

A. Probably.

Q. What dues are now due, February and March?

A. February and March, yes.

Q. Are the April dues due?

A. Yes.

Q. They are due right now?

A. Yes.

Q. Approximately how many have not sent in their dues for March and April?

A. I really don't know.

Q. Of those 400 members that you say that you have lost, approximately how many of those 400 were on lines east?

A. We do not keep a separate record.

* * * * * * *

[102] By Mr. Naughton:

Q. If they were on lines west, they, of course, would not be discouraged by the contract on lines east, is that correct?

A. What contract?

Q. The union shop contract that is in issue here.

A. No, I would say not.

Q. You are aware there is no union shop contract on lines west.

A. I am.

* * * * * * * *

Mr. Naughton: He answered he knows there was no union shop contract on lines west which contains the type of clause which might be applied against the Switchmen's Union of North America. Is that correct?

[103] The Witness: Yes.

Redirect Examination, by Mr. Leibik.

Q. Mr. Speirs, you were aware, of course, that there is a union shop agreement on lines west on the Milwaukee Railroad which contains the specific language of the Railway Labor Act and permits membership in any union national in scope qualified to select and designate a representative on the National Railroad Adjustment Board?

A. Yes, there is.

* * * * * * *

[104] **WILLIAM R. MEYERS**,

a witness called by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination, by Mr. Leibik.

Q. Will you state your name, please?

A. William R. Meyers.

Q. Where do you live, Mr. Meyers?

A. 401 South LaSalle Street, Chicago.

* * * * * * * *

[105] Q. Do you held any position with the Switchmen's Union of North America?

A. Yes, I do.

Q. What is that position?

A. Executive Vice President.

Q. How long have you been Executive Vice President of the Switchmen's Union of North America?

A. A little over seven years.

Q. What previous offices did you hold in the Switchmen's Union of North America prior to your assumption of duties as Executive Vice President?

A. I was local President, General Chairman on the railroad that I worked, delegate to the Superior Federation of Labor, and a member of the Finance and Insurance Board for the International.

Q. Did you hold any seniority rights on any carrier?

A. Yes, I do.

Q. What railroad is that?

[106] A. The Lake Superior Terminal & Transfer Railway Company in Superior, Wisconsin.

Q. Will you briefly relate your railroad experience, your previous railroad experience?

A. I hired out on the Terminal in August of 1937. I hold continuous seniority there. I also worked for the Duluth, Mesabi & Iron Range, and during the service I was furloughed and worked for the Union Pacific at Laramie, Wyoming.

Q. Do you hold any position with the National Adjustment Board?

A. Yes, I do.

Q. What is your position?

A. I am a member of the National Railroad Adjustment, First Division, representing switchmen.

Q. Have you also served as chairman of the National Railroad Adjustment Board, First Division?

A. Yes, I have.

Q. Would you name the other labor union members and the operating organizations which have selected and designated them as their respective members?

A. Don Miller is representing the Brotherhood of [107] Locomotive Firemen.

Mr. Sam Van Der Hei represents the Brotherhood of Railroad Trainmen.

Mr. Robert Delaney represents the Brotherhood of Locomotive Engineers.

Mr. Kenny Levin represents the Order of Railroad Conductors and Brakemen.

• • • • • • • •

[109] Q. Mr. Meyers, who pays your salary as a member of the National Railroad Adjustment Board?

A. The Switchmen's Union.

Q. Do each of the other four standard operating railway organizations pay the salary of their respective members on the Board?

A. As I understand it, that is correct.

• • • • • • • •

[111] O. You have testified that your salary is paid by the Switchmen's Union of North America, is that [112] correct?

A. Yes, sir.

Q. And the salary of the representative of the Brotherhook of Locomotive Firemen and Enginemen is paid by that organization?

A. Yes, sir.

Q. The salary of the members selected and designated by the Brotherhood of Railway Trainmen is paid by that organization?

A. Yes.

Q. And the salary of the representative of the Order of Railway Conductors and Brakemen is paid by that organization?

A. Yes, sir.

Q. And the salary of the member selected and designated by the Brotherhood of Locomotive Engineers is paid by that organization?

A. Yes, sir.

Q. Do you hold executive sessions with the other labor members on the First Division of the National Railroad Adjustment Board in adjudicating cases?

A. Yes, sir.

* * * * * * *

[113] Q. Do you vote as a unit on cases before the First Division of the National Railroad Adjustment Board?

A. Yes, sir.

Q. Are there occasions, Mr. Meyers, when the First Division of the National Railroad Adjustment Board is jointly involved in litigation?

A. Yes, sir.

Q. Would that situation arise over the enforcement of an award handed down by the First Division?

A. It could.

Q. Or would it arise in the case of an attempt to impeach an arbitrator's award?

A. Yes, it could.

[114] Q. In such cases are the members of the National Railroad Adjustment Board joined as parties to the litigation?

A. Yes, they are

Q. And have the members of the National Railroad Adjustment Board jointly secured services of attorneys to represent them in this litigation?

A. Yes, they have.

* * * * * * *

Q. Mr. Meyers, have you had occasion to represent members of the Switchmen's Union of North America employed by the Milwaukee Railroad at investigations and hearings held pursuant to the provisions of the collective bargaining agreement between the Brotherhood of Railroad Trainmen and the Milwaukee Railroad?

[115] A. Yes, I have.

Q. Have you had occasion to represent members of the Switchmen's Union of North America employed by the Milwaukee Railroad in direct conferences with officials of the Milwaukee Railroad?

A. Yes, I have.

Q. What was the nature of those conferences?

A. Well, they were in the nature of time claims, reinstatement cases.

Q. Were you successful in resolving some of those grievances?

A. Some of them, yes.

Q. Have you personally processed grievances and various cases, time claims and such, of members of the Switchmen's Union of North America employed by the Milwaukee Railroad to the First Division of the National Railroad Arbitration Board?

A. Yes, I have.

Q. Have those cases been adjudicated by the First Division of the National Railroad Arbitration Board?

A. No, they haven't; they are pending.

Q. You had no cases before the First Division [116] which had been adjudicated by the First Division?

A. Not me personally. I mean, the organization has been a petitioner in several cases before the Adjustment Board which have been adjudicated and that are awards of the Adjustment Board today, they were rendered awards.

Q. And your statement is that you presently have grievances pending before the First Division involving employees of the Milwaukee Railroad in yard service?

A. Yes, sir.

Q. Mr. Meyers, have you actively participated in meetings of the Railway Labor Executive Association along with representatives of the four other operating organizations?

A. Yes, I have.

Q. What did these meetings concern themselves with?

A. They concerned themselves with problems that the organizations were interested in that would affect membership of the respective organizations.

Q. Have you worked jointly with the Brotherhood [117] of Railroad Trainmen and other standard railway operating unions in matters of national wage and rules movements?

A. Yes, I have.

Q. In mediation cases before the National Mediation Board?

A. Yes. I would say yes to that.

Q. And in National Presidential Emergency Board cases?

A. Yes.

Q. Before the Presidential Rules Commission?

A. Yes.

Q. Before Arbitration Board 282 established by Congress?

A. Yes.

Q. Have you met in conference with representatives of the Milwaukee Railroad with respect to the application of the Washington job protection agreement?

A. Yes, I have.

Q. Are you serving at the present time as a member of the Vacation Disputes Committee?

A. Yes, I am.

Q. And this is a committee established by the five op- [118] erating organizations to resolve disputes which arise under the national agreements?

A. Yes, it is.

Q. And those agreements affect the switchmen employed on the Milwaukee Railroad?

A. Yes, it does.

* * * * * * * *

[123] **Cross-Examination**, by Mr. Reedy.

* * * * * * * *

Q. Do I take it that these claims that your organization processed on behalf of some Milwaukee Railroad employees, they were processed under the provisions of the contract with the Brotherhood of Railroad Trainmen?

A. That is correct.

[124] Q. I understand, do I, correctly that the Switchmen's Union of North America does not have a contract with the Milwaukee Railroad?

A. Well, let me say this to answer that: We are a party to the—say like the Washington job protection agreement or the National Vacation Agreement which is also on the Milwaukee Road, and so therefore we would have a contract with the Milwaukee Road insofar as those agreements are concerned.

Now the basic agreement, no, we have no basic agreement.

Q. Now this agreement that you talk about covers every Class I railroad in the United States, does it not, the Washington Job Agreement?

A. Yes, sir.

Q. And there are over a hundred such railroads in the United States, isn't that correct?

A. I would say yes.

Q. But as far as the Milwaukee Railroad is concerned individually, you do not have a contract with that railroad, isn't that a fact?

A. Only in the fact that they are one of the hundred railroads, yes.

[125] Q. Only in the sense that you have applied it to the national situation, is that right?

A. Yes.

* * * * * * * *

Q. How many cases of the Milwaukee Railroad now pending before the National Railroad Arbitration Board are there in which officers of the Switchmen's Union of North America represent the employees, do you know?

A. I think there is three.

Q. There are three. Do you know the names of the [126] cases?

A. Well, one would be the O'Trembiak case; one would be the Larsen case; one would be the Miller case. And we are presently working on a case for Miller, a different Miller from Milwaukee, Stanley Miller from Milwaukee.

Q. Have any of the cases that you have prosecuted before the Board been adjudicated by the Board?

A. No, they have not.

* * * * * * * *

Cross-Examination, by Mr. Naughton.

* * * * * * * *

[127] Q. Did you ever sign any of these national vacation agreements?

A. I would say—You see, it has been amended from time to time, Mr. Naughton. I would say that there are probably some of the amendments that have my signature on, yes, sir.

Q. In those negotiations, did you purport to represent any railroad on which the trainmen has a contract?

* * * * * * * *

[128] By the Witness: A. Yes.

By Mr. Naughton: Q. Did the Trainmen represent the Switchmen's Union in those negotiations?

A. They represent all of the employees involved and members of the Switchmen's Union were involved, yes, sir.

Q. Is it your testimony that there had to be a joint signing of every one of these agreements by each of the representatives before any of the railroads could be bound?

A. The negotiations were handled on a national basis and that would be the way you would sign them, the five organizations would each have a representative and they would sign it and all the members of each organization would be bound by the signature as from the national handling, that is right.

Q. Was there any agreement requiring the five organ-
[129] izations to hold together until the agreement was signed either in writing or orally?

A. I would imagine that they have agreed orally that that is the way they would handle it, yes.

Q. Did you ever hear of anybody, either a railroad or a union, breaking away from national negotiations and signing an individual property agreement?

A. Yes.

* * * * * * *

Mr. Leibik: This concludes our case.

The Court: Does the plaintiff rest?

Mr. Leibik: The plaintiff rests.

Plaintiffs rest.

Mr. Uelmen: May it please the Court, we move to dismiss the complaint. The defendant Dirks moves to dismiss the complaint.

* * * * * * *

[153] The Court: Mr. Leibik, as I understand it, your individual clients were all yard service employees?

Mr. Leibik: Yard service employees.

Plaintiffs' Exhibit No. 4

[154] The Court: And the Switchmen's Union of North America does not take the position that the agreement fails to provide for inter-craft mobility. The only problem for which Section 152 provides the solution of an alternate union membership is alternate union membership under a union shop contract.

You maintain, as I understand it, instead, that the statute guaranteed to them the right to membership in any union.

Mr. Leibik: Not in any union, your Honor, no. Not in any union, only in one of the five qualified unions, and that is precisely what the Congress of the United States had before it in 1950 and 1951.

PLAINTIFFS' EXHIBIT NO. 4.

National Mediation Board

Application for Investigation of Representation Dispute
To the National Mediation Board,
Washington, D. C.

A dispute has arisen among the employees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company as to who are the representatives of these employees designated and authorized in accordance with the requirements of the Railway Labor Act. The undersigned, one of the parties to the dispute, hereby requests the National Mediation Board to investigate this dispute, and to certify the name or names of the individuals or organizations authorized to represent the employees involved in accordance with Section 2, Ninth, of the Act.

Plaintiffs' Exhibit No. 4

Parties to dispute

Switchmen's Union of North America
(Petitioning organization or representative)

Brotherhood of Railroad Trainmen Date unknown
(Organization holding existing agreement, if any, and date thereof)

[None]
(Other organizations or representatives involved in dispute)

If more than one craft or class, list separately

Craft or class of employees involved	Number of employees involved	Number authorizing representation
1. Yardmen (including yard foreman,		
2. helpers and switchmen)	1175	718
3.		
4.		
5.		
6.		
7.		

(Use separate line for each craft or class)

Evidence of representation

The evidence of representation has been forwarded under separate cover and consists of (718) signed authorization cards
(Describe, as authorization cards, petition, etc.)

Signed at Buffalo, New York, this 14th day of November, 1966.

Name /s/ Neil P. Speirs
(Signature of applicant)
Title President

Docketed

Filed
Jul 7 1967

(File this application in duplicate)

(If necessary, use and attach additional sheet)

PLAINTIFFS' EXHIBIT NO. 5.

National Mediation Board
Washington, D. C. 20572

November 18, 1966

Mr. S. W. Amour
Asst. to Vice President-Personnel
Chicago, Milwaukee, St. Paul &
Pacific Railroad Company
374 Union Station
Chicago, Illinois 60606

Mr. Charles Luna, President
Brotherhood of Railroad Trainmen
666 Euclid Avenue
Cleveland, Ohio 44114

Gentlemen:

We have an application from the Switchmen's Union of North America, AFL-CIO to investigate a representation dispute under the provisions of Section 2, Ninth, of the Railway Labor Act among the following employees of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company:

> Yardmen (including yard foreman, helpers and switchmen)

Mr. Amour is requested to furnish the total number of employees covered by this application and he is also invited to submit any other statement he may care to make.

Our records indicate that the employees are presently represented by the Brotherhood of Railroad Trainmen

and Mr. Luna is invited to submit any statement he may care to make with respect to this application.

Very truly yours,

/s/ Thomas A. Tracy
Thomas A. Tracy
Executive Secretary

cc: Mr. Neil P. Speirs, Int'l President
Switchmen's Union of North America, AFL-CIO
3 Linwood Avenue
Buffalo 2, New York

Please Make Submission and Replies to Correspondence in Duplicate

Docketed

Filed
Jul 7 1967

PLAINTIFFS' EXHIBIT NO. 6.

National Mediation Board
Washington, D. C. 20572

December 8, 1966

Case No. R-3895

Mr. S. W. Amour
Asst. to Vice President-Personnel
Chicago, Milwaukee, St. Paul &
Pacific Railroad Company
374 Union Station
Chicago, Illinois 60606

Mr. Charles Luna, President
Brotherhood of Railroad Trainmen
666 Euclid Avenue
Cleveland, Ohio 44114

Mr. Neil P. Speirs, Int'l President
Switchmen's Union of North America, AFL-CIO
3 Linwood Avenue
Buffalo 2, New York

Gentlemen:

Reference is made to the application made by the Switchmen's Union of North America for the services of this Board under the provisions of Section 2, Ninth, of the Railway Labor Act in a dispute involving representation of:

Yardmen (including yard foreman, helpers and switchmen)

Employees of Chicago, Milwaukee, St. Paul & Pacific RR Co.

Plaintiffs' Exhibit No. 6

This application has been docketed as our Case No. R-3895 and will hereafter be referred to by that number. A mediator will be assigned to investigate this dispute as soon as possible consistent with prior commitments.

Very truly yours,
/s/ Thomas A. Tracy
Thomas A. Tracy
Executive Secretary

C. M. St. P. & P. R. R. Co.
Office of
Dec 12 1966
Vice President
Labor Relations
Chicago, Illinois

United States District Court
Northern District of Illinois
Before Judge Hoffman
Plaintiff Ex. No. 6
Dorothy L. Brackenbury
Official Court Reporter
Docketed
Filed
Jul 7 1967
at .... O'clock ....
Elbert A. Wagner, Jr., Clerk
67C285

Plaintiffs' Exhibit No. 7

PLAINTIFFS' EXHIBIT NO. 7.

Representation Authorization

I hereby designate the Switchmen's Union of North America as my representative in the handling of all matters relating to rates of pay, rules and working conditions, etc., arising under the Railway Labor Act as amended.

....

Name of Railroad Yard or Terminal

Title of Position

☐ Foreman .....

☐ Helper Signature

☐ Switch Tender .....

☐ Car Retarder Date

.....

_____

Name

_____

Address

_____

City

_____

Railroad Yard or Terminal

Docketed

Filed
Jul 7 1967
at ..... O'clock .....

Elbert A. Wagner, Jr.
67C285 Clerk

PLAINTIFFS' EXHIBIT NO. 8.

Memorandum of Agreement
as between the
Chicago, Milwaukee, St. Paul and
Pacific Railroad Company
(Lines East)
and the
Brotherhood of Railroad Trainmen
Covering Union Shop

This agreement, made this 9th day of June, 1953, by and between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the "Company", and the employes thereof represented by the Brotherhood of Railroad Trainmen, hereinafter referred to as the "Brotherhood", witnesseth:

It Is Agreed:

Section 1.—In accordance with and subject to the terms and conditions hereinafter set forth, all employes of the company now or hereafter subject to the rules and working conditions agreement between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreement, become members of the Brotherhood within sixty calendar days of the date they first perform compensated service as such employes after the effective date of this agreement, and thereafter shall maintain membership in the Brotherhood; except that such membership shall not be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months. Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreement.

Plaintiffs' Exhibit No. 8

Section 2.—The requirements of membership provided for in Section 1 of this agreement shall be satisfied if any employe shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act and admitting to membership employes of a craft or class in train, yard, engine or hostling service that is, in any of the services or capacities, covered by Section 3, First, (h), of the Railway Labor Act, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board; provided, however, that nothing contained in this agreement shall prevent any employe from changing membership from one organization to another organization admitting to membership employes of a craft or class in any of the services above specified.

Section 3. (a)—Employes who retain seniority under the rules and working conditions agreement governing their class or craft and who are regularly assigned or transferred to full time employment not covered by such agreement, or who, for a period of thirty days or more, are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in Section 1 of this agreement so long as they remain in such other employment, or furloughed or absent as herein provided. Should such employes return to any service covered by the said rules and working conditions agreement and continue therein thirty calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such agreement, be required, within thirty-five calendar days from date of their return to such service, to comply with the provisions of Sections 1 and 2 of this agreement.

(b)—The seniority status and rights of employes furloughed to serve in the Armed Forces or granted leaves of

absence to engage in studies under an educational aid program sponsored by the federal government or a state government for the benefit of ex-service men shall not be terminated by reason of any of the provisions of this agreement but such employes shall, upon resumption of employment, be considered as coming within Section 1 of this agreement.

Section 4.—Nothing in this agreement shall require an employe to become or to remain a member of the Brotherhood if such membership is not available to such employe upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employe is denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employes in the same status at the same time.

Section 5, Revised Effective November 1, 1953.

(a)—Each employe covered by the provisions of this agreement shall be considered by the Company to have met the requirements of the agreement unless and until the Company is advised to the contrary in writing by the Brotherhood. The Brotherhood will notify the Company in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employe who it is alleged has failed to comply with the terms of this agreement and who the Brotherhood therefore claims is not entitled to continue in employment subject to the Rules and Working Conditions Agreement. The form of notice to be used shall be agreed upon by the Company and the Brotherhood and the form shall make provision for speci-

fying the reasons for the allegation of non-compliance. Upon receipt of such notice, the Company will, within ten calendar days of such receipt, so notify the employe concerned in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employe shall be given the Brotherhood. An employe so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall within a period of ten calendar days from the date of receipt of such notice, request the Company in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the Company shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employe in writing with copy to the Brotherhood, by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A representative of the Brotherhood shall attend and participate in the hearing. The receipt by the Company of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the Company is rendered.

In the event the employe concerned does not request a hearing as provided herein, the Company shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty calendar days from receipt of the above described notice from the Brotherhood, unless the Company and the Brotherhood agree otherwise in writing.

(b)—The Company shall determine on the basis of the evidence produced at the hearing whether or not the employe has complied with the terms of this agreement and shall render a decision within twenty calendar days from

the date that the hearing is closed, and the employe and the Brotherhood shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision is that the employe has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty calendar days of the date of said decision except as hereinafter provided or unless the Company and the Brotherhood agree otherwise in writing.

If the decision is not satisfactory to the employe or to the Brotherhood it may be appealed in writing by Registered Mail, Return Receipt Requested, directly to the highest officer of the Company designated to handle appeals under this agreement. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The Company shall promptly notify the other party in writing of any such appeal, by Registered Mail, Return Receipt Requested. The decision on such appeal shall be rendered within twenty calendar days of the date the notice of appeal is received, and the employe and the Brotherhood shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision on such appeal is that the employe has not complied with the terms of this agreement, his seniority and employment under the Rules and the Working Conditions Agreement shall be terminated within twenty calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the Company and the Brotherhood agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the Brotherhood or the employe involved requests the selec-

tion of a neutral person to decide the dispute as provided in Section 5 (c) below. Any request for selection of a neutral person as provided in Section 5 (c) below shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person.

(c)—If within ten calendar days after the date of a decision on appeal by the highest officer of the Company designated to handle appeals under this agreement the Brotherhood or the employe involved requests such highest officer in writing by Registered Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Company designated to handle appeals under this agreement or his designated representative, the Chief Executive of the Brotherhood or his designated representative, and the employe involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The Company, the Brotherhood and the employe involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The Company, the employe, and the Brotherhood shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested. If the position of the employe is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the Company and the Brotherhood; if the employe's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the Company, the Brotherhood and the employe.

Plaintiffs' Exhibit No. 8

(d)—The time periods specified in this section may be extended in individual cases by written agreement between the Company and the Brotherhood.

(e)—The General Chairman of the Brotherhood shall notify the Company in writing of the title(s) and address(es) of its representatives who are authorized to serve and receive the notices described in this agreement. The Company shall notify the General Chairman of the Brotherhood in writing of the title(s) and address(es) of its representatives who are authorized to receive and serve the notices described in this agreement.

(f)—In computing the time periods specified in this agreement, the date on which a notice is received or decision rendered shall not be counted.

Section 6.—Provisions of investigation and discipline rules contained in the rules and working conditions agreement between the Company and the Brotherhood will not apply to cases arising under this agreement.

Section 7.—Neither this agreement nor any provisions contained therein shall be used in any manner whatsoever as a basis for time or money claims against the Carrier; and no part of the schedule agreement covering rates of pay and working conditions shall be used as a basis for a grievance or time claim by or on behalf of any employe predicated upon an alleged violation, misapplication or non-compliance with any part of this agreement.

Section 8.—In the event that seniority and employment under the Rules and Working Conditions Agreement is terminated by the Company under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the Brotherhood shall indemnify and save harmless the Company against any and all liability arising as the result of such improper, unlawful,

or unenforceable termination of seniority and employment; provided, however, that this section shall not apply to any case in which the Company involved is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case the Company aets in collusion with any employe; provided further, that the aforementioned liability shall not extend to the expense to the Company in defending suits by employes whose seniority and employment are terminated by the Company under the provisions of this agreement.

Section 9.—An employe whose seniority and employment is terminated because of alleged non-compliance with the provisions of this agreement and such termination of seniority and employment is subsequently determined to be improper, unlawful or unenforceable, the employe shall be returned to service with seniority rights unimpaired.

Section 10.—An employe whose employment is terminated as a result of non-compliance with the provisions of this agreement shall be regarded as having terminated his employe relationship for vacation purposes.

Section 11. (a)—The carrier party to this agreement shall periodically deduct from the wages of employes subject to this agreement periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such organization, and shall pay the amount so deducted to such officer of the organization as the organization shall designate: Provided, however, that the requirements of this subsection (a) shall not be effective with respect to any individual employe until he shall have furnished the carrier with a written assignment to the organization of such membership dues, initiation fees and assessments, which assignment shall be revocable in writing after the expiration of one year or upon the termination of this agreement whichever occurs sooner.

Plaintiffs' Exhibit No. 8

(b)—The provisions of subsection (a) of this section shall not become effective unless and until the carrier and the organization shall, as a result of further negotiations, agree upon the terms and conditions under which such provisions shall be applied; such agreement to include, but not be restricted to, the means of making said deductions, the amounts to be deducted, the form, procurement and filing of authorization certificates, the frequency of deductions, the priority of said deductions with other deductions now or hereafter authorized, the payment and distributions of amounts withheld and any other matters pertinent thereto.

Section 12.—This agreement is in full, final and complete settlement of the notice served upon this Company on February 1, 1951, and shall become effective July 1, 1953, and shall remain in full force and effect thereafter until revised or amended in the manner prescribed by the provisions of the Railroad Labor Act, as amended.

Signed at Chicago, Illinois, this 9th day of June, 1953.
For: Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Lines East).

(Signed) C. P. Downing,
Assistant to Vice President.

For the Employes:

(Signed) G. D. Houser
General Chairman—Brotherhood of Railroad Trainmen

Approved:

(Signed) W. M. Dolan
Vice President—Brotherhood of Railroad Trainmen

Plaintiffs' Exhibit No. 8

**Memorandum of Agreement
as between the
Chicago, Milwaukee, St. Paul and
Pacific Railroad Company
(Lines East)
and the
Brotherhood of Railroad Trainmen
Covering Union Shop**

It is agreed that in the application of the Union Shop Agreement signed this date in Chicago, Illinois, that any employe in service on the date of this agreement who is not a member of a union as provided in Section 2 of the Union Shop Agreement and who will make affidavit he was a member of a bona fide and recognized religious group, on the date of this agreement, having scruples against joining a union, will, if he would otherwise be required to join a union under the Union Shop Agreement, be deemed to have met the requirements of the Union Shop Agreement if he agrees to and does pay initiation fees, periodic dues and assessments to one of the unions as specified in Section 2 of the Union Shop Agreement.

Signed at Chicago, Illinois, this 9th day of June, 1953.

For: Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Lines East).

(Signed) C. P. Downing,
Assistant to Vice President.

For the Employes:

(Signed) G. D. Houser
General Chairman, Brotherhood of Railroad Trainmen

Approved:

(Signed) W. M. Dolan
Vice President—Brotherhood of Railroad Trainmen

PLAINTIFFS' EXHIBIT NO. 9.

Agreement
Between the
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
(Lines East)
and the
Brotherhood of Railroad Trainmen.

This agreement, made this 1st day of February, 1967, by and between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the "Company" (Lines East), and the Brotherhood of Railroad Trainmen, hereinafter referred to as the "Brotherhood", witnesseth:

It Is Agreed:

Section 1.

(a) In accordance with and subject to the terms and conditions hereinafter set forth, all employes of the company now or hereafter subject to the rules and working conditions agreement between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreement, become members of the Brotherhood within sixty calendar days of the date they first perform compensated service as such employes after the effective date of this agreement, and thereafter shall maintain membership in the Brotherhood; except that such membership shall not be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months.

(b) It is agreed, as a condition of continued employment, all employes of the company shall hold or acquire

membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act, having a labor contract with the C. M. St. P. & P. Railroad Company (Lines East) covering employes of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employe from changing membership from one organization to another organization, having a labor contract with the C. M. St. P. & P. Railroad Company (Lines East), covering employes of a craft or class in train or yard service; provided further, however, that the right of a yardman, who does not hold interchangeable rights, to acquire or hold membership in an organization shall be confined to the Brotherhood.

Section 2.

(a) Every employe covered by the provisions of this agreement shall be considered by the Company to have met the requirements of this agreement, or as having been denied membership in the Brotherhood, unless the Company is advised to the contrary in writing by the Brotherhood.

(b) Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreement.

Section 3.

Employees promoted to official or other positions who retain and/or accumulate seniority under the provisions of the schedule agreement, will not have such seniority terminated by reason of any of the provisions of this agreement; provided, that if such employes shall have terminated membership during their occupancy of official or other positions, they shall, within sixty (60) calendar days following date of their return to service represented by this Brotherhood, come under the provisions of Section 1 of this agreement.

Plaintiffs' Exhibit No. 9

Section 4.

Employes furloughed through reduction of force, or absent due to sickness or disability, or leave of absence, who retain and/or accumulate seniority under the provisions of the schedule agreement, will not have such seniority terminated by reason of any of the provisions of this agreement, but shall, within sixty (60) calendar days following date of their resumption of employment, come under Section 1 of this agreement.

Section 5.

The seniority status and rights of employes furloughed to serve in the Armed Forces shall not be terminated by reason of any of the provisions of this agreement, but shall, within sixty (60) calendar days following resumption of employment, come under Section 1 of this agreement.

Section 6.

An employe, retired on disability annuity under the Railroad Retirement Act at an age earlier than 65 and who retains seniority until he reaches age 65, shall not have his seniority status and rights terminated by reason of non-compliance with the provisions of this agreement. If the employe returns to active service, he shall, within sixty (60) calendar days following date of his return, come under Section 1 of this agreement.

Section 7.

Notice of non-compliance with the provisions of Section 1 of this agreement by an individual employe shall be given by Certified Mail by the General Chairman (or designated representative) of the Brotherhood to the Vice President-Labor Relations of the Company not earlier than the expiration of the sixty (60) calendar day period from the date of employment in a craft or class of service covered by this agreement or resumption of employment as contemplated by Sections 3, 4, 5 and 6.

Plaintiffs' Exhibit No. 9

Section 8.

(a) Termination of an employe's seniority rights and employment relationship with the Company due to alleged non-compliance with the provisions of Section 1 of this agreement shall not be made without notice. The Brotherhood will notify the highest officer of the Company designated to handle notices under this agreement, by Certified Mail, of any employe who it is alleged has failed to comply with the provisions of Section 1 of this agreement. Upon receipt of such notice, the Company will, within ten calendar days of such receipt, so notify the employe concerned in writing by Certified Mail, or personal delivery, delivery to be evidenced by a receipt. An employe so notified who disputes the fact that he has failed to comply with the terms of this agreement shall, within a period of ten calendar days from the date of receipt of such notice, request the Company in writing by Certified Mail, or personal delivery, delivery to be evidenced by a receipt, to accord him a hearing. Upon receipt of such request the Company shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employe in writing with copy to the Brotherhood by Certified Mail, or personal delivery, delivery to be evidenced by a receipt. The receipt by the Company of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the Company is rendered.

The Company shall determine on the basis of the evidence produced at the hearing whether or not the employe has complied with the provisions of Section 1 of this agreement and shall render a decision within ten calendar days from the date that the hearing is closed, and the employe and the Brotherhood shall be promptly advised thereof in writing, by Certified Mail, or personal delivery, delivery to be evidenced by a receipt.

Plaintiffs' Exhibit No. 9

In the event the employee concerned does not request a hearing as provided herein, the Company shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty calendar days from receipt of the above described notice from the Brotherhood, unless the Company and the Brotherhood agree otherwise in writing.

(b) Discipline rule contained in existing agreements between the Company and the Brotherhood will not apply to cases arising under this agreement.

Section 9.

(a) An employe whose service is terminated for noncompliance with the provisions of this agreement, shall be regarded as having terminated his employment relationship, except such termination will not be required to be effected until such time as a qualified replacement is available; however, his position on the roster will be changed to show him as being the youngest employe on the roster.

(b) An employe whose services are terminated in accordance with the provisions of Section 8 hereof shall not thereafter be restored to the carrier's service in any craft or class represented by the Brotherhood except as a new employe or as provided in Section 11 of this agreement.

Section 10.

Nothing in this agreement shall require an employe to become or to remain a member of the Brotherhood if such membership is not available to such employe upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employe is denied or terminated for any reason other than the failure of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penal-

ties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employes in the same status at the same time.

Section 11.

(a) If an employe's seniority and employment under the Rules and Working Conditions Agreement is terminated by the Company under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the Brotherhood shall indemnify and save harmless the Company against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; provided, however, that this section shall not apply to any case in which the Company involved is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case the Company acts in collusion with any employe; provided further, that the aforementioned liability shall not extend to the expense to the Company in defending suits by employes whose seniority and employment are terminated by the Company under the provisions of this agreement.

(b) An employe whose seniority and employment is terminated because of alleged non-compliance with the provisions of this agreement and such termination of seniority and employment is subsequently determined to be improper, unlawful or unenforceable, the employe shall be returned to service with seniority rights unimpaired.

Section 12.

(a) In the event the decision reached by the Company on the basis of the hearing held in accordance with the

provisions of Section 8 hereof is not satisfactory to the employe or to the Brotherhood it may be appealed in writing by Certified Mail, Return Receipt Requested, directly to the highest officer of the Company designated to handle appeals under this agreement. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The Company shall promptly notify the other party in writing of any such appeal by Certified Mail, Return Receipt Requested. The decision on such appeal shall be rendered within ten calendar days of the date the notice is received, and the employe and the Brotherhood shall be promptly advised thereof in writing by Certified Mail, Return Receipt Requested.

(b) If the decision on such appeal is that the employe has not complied with the terms of this agreement, his seniority and employment under the rules and working conditions agreement shall be terminated within ten calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the Company and the Brotherhood agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the Brotherhood or the employe involved requests the selection of a neutral person to decide the dispute as provided in Section 12 (c) below. Any request for the selection of a neutral person, as provided in Section 12 (c) below, shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person, except, however, in a case where the selection of a neutral is requested by the employe, beginning within ten calendar days of the date of the carrier's decision on appeal, and

continuing until decision is rendered by the neutral person, his position on the roster will be changed to show him as being the youngest employe on the roster.

(c) If within ten calendar days after the date of a decision on appeal by the highest officer of the Company designated to handle appeals under this agreement the Brotherhood or the employe involved requests such highest officer in writing by Certified Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Company designated to handle appeals under this agreement or his designated representative, the Chief Executive of the Brotherhood or his designated representative, and the employe involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The Company, the Brotherhood and the employe involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The Company, the employe and the Brotherhood shall be promptly advised thereof in writing by Certified Mail, Return Receipt Requested. If the position of the employe is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the Company and the Brotherhood; if the employe's position is not sustained, such fees, salary and expenses shall be borne in equal share by the Company, the Brotherhood and the employe.

(d) The time periods specified in this section may be extended in individual cases by written agreement between the Company and the Brotherhood.

Plaintiffs' Exhibit No. 9

(e) In computing the time periods specified in this agreement, the date on which a notice is received or decision rendered shall not be counted.

Section 13.

No part of this agreement shall be used in any manner whatsoever as a basis for a grievance or time claim by or on behalf of any employe; and no part of the schedule agreement covering rates of pay and working conditions shall be used as a basis for a grievance or time claim by or on behalf of any employe predicated upon an alleged violation, misapplication or non-compliance with any part of this agreement.

Section 14.

This agreement is in full and final settlement of the Section 6 notices dated November 16, 1966 and December 14, 1966, served on this carrier by the BRT, and carrier's counterproposals dated November 25, 1966. This agreement, which supersedes the Union Shop Agreement dated June 9, 1953, shall become effective March 1, 1967, and will remain in effect until revised or cancelled in accordance with the provisions of the Railway Labor Act, as amended.

For The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Lines East),

(Signed) S. W. Amour,
Vice President-Labor Relations.

For the Employes:

(Signed) E. L. Dirks,
General Chairman,
Brotherhood of Railroad Trainmen.

Plaintiffs' Exhibit No. 9

Agreement
Between The
Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Lines East),
And The
Brotherhood of Railroad Trainmen.

It is agreed that in the application of the Union Shop Agreement signed this date in Chicago, Illinois, that any employe in service on the date of this agreement who is not a member of a union as provided in Section 1 of the Union Shop Agreement and who will make affidavit he was a member of a bona fide and recognized religious group, on the date of this agreement, having scruples against joining a union, will, if he would otherwise be required to join a union under the Union Shop Agreement, be deemed to have met the requirements of the Union Shop Agreement, if he agrees to and does pay initiation fees, periodic dues and assessments to one of the unions as specified in Section 1 of the Union Shop Agreement.

Signed at Chicago, Illinois, this 1st day of February, 1967.

For The Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Lines East),

(Signed) S. W. Amour,
Vice President-Labor Relations.

For the Employes:

(Signed) E. L. Dirks,
General Chairman—BRT.

IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

W. L. Birkholz, Ray Granger, Thomas Foley, David Tucibat, Wayne Blackburn and Marvin Hoisington, individually and in behalf of all members of the Switchmen's Union of North America, AFL-CIO, who are employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Switchmen's Union of North America, AFL-CIO, an unincorporated association, *Plaintiffs,* *vs.* Elmer L. Dirks, individually and as General Chairman of the Brotherhood of Railroad Trainmen, an unincorporated association, Charles Luna, L. E. Chester, and W. E. B. Chase, individually and in behalf of all members of the Brotherhood of Railroad Trainmen, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, a corporation, *Defendants.*	Civil Action. No. 67-C-285.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Findings of Fact.

1. Defendants Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Carrier") and Brotherhood of Railroad Trainmen, AFL-CIO ("Trainmen") are respectively

a carrier and the representative of its yard service employees under the Railway Labor Act, 45 U. S. C. § 151 (Complaint, ¶ 11; Plaintiffs' Exhibit No. 5). Defendant Elmer L. Dirks is General Chairman of the General Grievance Committee maintained by the Trainmen for the Carrier's Lines East (Complaint, ¶ 9).

2. The Trainmen, through its General Grievance Committee, is party to collective bargaining agreements with the Carrier setting forth rates of pay, rules, and working conditions for all yardmen employed on Lines East (Tr. 75-76). The activities of the General Grievance Committee receive direct financial support only from the membership of the Trainmen (Tr. 76-77, 83-84).

3. Both plaintiff Switchmen's Union of North America, AFL-CIO ("SUNA") and the Trainmen are among the five "standard" operating organizations qualified to select or designate members of the National Railroad Adjustment Board, First Division, as provided in Section 3 of the Railway Labor Act, 45 U. S. C. § 153 (Complaint, ¶ 8; Tr. 37, 106). On November 14, 1966, under the terms of the union shop agreement then in effect between the Trainmen and the Carrier, a number of yardmen in the bargaining unit represented by the Trainmen, including the five individual plaintiffs, held membership in SUNA (Tr. 34, 85).

4. On February 1, 1967, the Trainmen and the Carrier modified their union shop agreement to provide, in relevant part, as follows:

> "Section 1 (b) It is agreed, as a condition of continued employment, all employees of the company shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act, having a labor contract with the C. M. St. P. & P. Railroad

Company (Lines East) covering employees of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employee from changing membership from one organization to another organization, having a labor contract with the C. M. St. P. & P. Railroad Company (Lines East), covering employees of a craft or class in train or yard service; provided further, however, that the right of a yardman, who does not hold interchangeable rights, to acquire or hold membership in an organization shall be confined to the Brotherhood." (Plaintiffs' Exhibit No. 9.)

The effect of the changes was to require membership in the Trainmen for all yardmen except those holding employment rights in another craft or class and to limit alternate membership for such persons to organizations having a labor agreement with the Carrier covering employees in its train or yard service.

5. SUNA has no labor agreement with the Carrier, does not negotiate basic labor agreements with the Carrier, and has never been certified or recognized as the representative of any employees of the Carrier at any time since passage of the Railway Labor Act in 1926 (Tr. 74-75, 79, 80, 124; Complaint, ¶ 14). Membership in SUNA will not satisfy the obligations imposed upon yardmen by the February 1, 1967, union shop agreement.

6. SUNA and the Trainmen help finance activities of the Railway Labor Executives Association, a private organization of the presidents of the "standard" railroad labor unions to formulate and sponsor national legislative and policy programs of common concern (Tr. 25, 26, 116). Both organizations have represented their respective memberships on various boards and committees and have participated in certain litigation of interest to railroad labor generally and, on occasion, in the negotiation of

particular agreements affecting employees on all Class I railroads (Tr. 27, 31, 32, 33, 34, 83-84, 117-118, 124, 128-129).

7. In several instances, SUNA has chosen to process cases under the Trainmens' collective agreements before designated officers of the Carrier and before the National Railroad Adjustment Board for individual members of SUNA whom the Trainmen would otherwise represent (Tr. 76-78, 79, 114-115, 125). However, on the record as a whole, the Court finds that SUNA members employed by the Carrier do not contribute a full share of financial support to the General Grievance Committee of the Trainmen for the performance of its functions under the Railway Labor Act.

8. On November 14, 1966, SUNA applied to the National Mediation Board for a representation election among yardmen employed on the eastern and western lines of the Carrier, but no such election has been ordered or scheduled by the Board (Plaintiffs' Exhibits Nos. 4, 5 and 6; Tr. 58). SUNA is competing with the Trainmen for allegiance of the yardmen and seeks to supplant the Trainmen as their statutory bargaining representative (Plaintiffs' Exhibit No. 7).

9. Although the February 1, 1967 union shop agreement applied only to Lines East of the Carrier and the Lines West agreement does not prohibit SUNA membership, SUNA's application for an election encompassed both the eastern and western lines (Tr. 99-103). The evidence does not demonstrate that the defendants modified their union shop agreement for the purpose of influencing the outcome of any election that the National Mediation Board may conduct.

Conclusions of Law.

1. This Court has jurisdiction under the Railway Labor Act, 45 U. S. C. § 151, et seq., and 28 U. S. C. 1337, to determine the validity of union shop agreements.

2. This Court has jurisdiction to determine whether the union shop agreement of February 1, 1967 was entered into by defendants for the purpose of influencing the outcome of a representation election to be conducted by the National Mediation Board. Since the charge involves a dispute between certain employees of the Carrier and their bargaining representative, it is within the jurisdiction of this Court, joinder of the Carrier notwithstanding. *Rumbaugh v. Winifrede Railroad Co.*, 331 F. 2d 530, 535-536, 538 (4th Cir. 1964), Sobeloff, C. J., *cert. denied,* 379 U. S. 929 (1964).

3. The provisions of Section 2, Eleventh, of the Railway Labor Act, 45 U. S. C. 152, Eleventh, authorize carriers and the representatives of their employees to enter into union shop agreements requiring employees within the craft or class represented to become and to remain members of the bargaining representative as a condition of employment.

4. The 1951 union shop amendments to the Railway Labor Act, 45 U. S. C. § 2, Eleventh, were enacted in order that defendants could contract for "the elimination of the 'free rider' who did not support his representative's performance of its functions under the Act." *International Association of Machinists v. Street,* 367 U. S. 740, 763-64 (1961). It is the statutory representative of the craft or class, in this case the Trainmen, that was the object of Congressional concern. SUNA is without obligations under the Railway Labor Act to employees of the Carrier.

5. The language of Section 2, Eleventh (c) which permits alternative union membership for operating em-

ployees in an organization national in scope and organized in accordance with the Act, cannot be literally applied but must be limited in its scope by construction in light of the policy it was intended to serve. "The only purpose of Section 2, Eleventh (c) was a very narrow one—to prevent compulsory dual unionism or the necessity of changing from one union to another when an employee temporarily changes crafts." *Pennsylvania Railroad Co. v. Rychlik,* 352 U. S. 480, 492 (1957).

6. The February 1, 1967, union shop agreement adequately meets the narrow problem of intercraft mobility by permitting alternative membership for yardmen holding employment rights in another craft or class, namely those with interchangeable rights, and in unions that have contracts with the Carrier covering the other craft or class involved.

7. It was not the purpose of Congress in Section 2, Eleventh (c), "to help dissident or rising new unions recruit new members" or to permit "employees to choose between membership in (their bargaining representative) and another competing union". *Pennsylvania Railroad Co. v. Rychlik,* 352 U. S. 480, 488-489, 494 (1957). SUNA, a rival organization without a labor agreement covering a craft or class to which yardmen employed by the Carrier may be transferred, is not within the intendment of the statute.

8. The fact that SUNA, like the Trainmen, is qualified to select or designate members of the National Railroad Adjustment Board or participates in other activities of concern to railroad labor generally does not bring SUNA or its members within the alternative union protections of Section 2, Eleventh (c) in the absence of a showing that they face the problem of intercraft mobility. *Rohrer v. Conemaugh & Black Lick Railroad Co.,* 359 F. 2d 127 (3rd Cir. 1966).

9. Since the February 1, 1967 union shop agreement is lawful, its execution and enforcement do not constitute unlawful coercion, interference or influence under Section 2 of the Railway Labor Act, 45 U. S. C. § 152.

10. Defendants have not violated any of the provisions of the Railway Labor Act.

11. The issues in this case are found against the plaintiffs and for the defendants and plaintiffs are not entitled to relief or any part thereof they pray for in their Complaint. The plaintiffs have failed to show any irreparable injury or that they have sustained any damages, the defendants not having been shown to have violated, or to have threatened to violate, the Railway Labor Act.

12. The complaint as to the several defendants must be dismissed in its entirety on the merits with costs.

Julius J. Hoffman,
United States District Judge.

Dated: May 24, 1967.

Judgment Order

IN THE UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

W. L. Birkholz, Ray Granger, Thomas Foley, David Tucibat, Wayne Blackburn and Marvin Hoisington, individually and in behalf of all members of the Switchmen's Union of North America, AFL-CIO, who are employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Switchmen's Union of North America, AFL-CIO, an unincorporated association,
Plaintiffs,

vs.

Elmer L. Dirks, individually and as General Chairman of the Brotherhood of Railroad Trainmen, an unincorporated association, Charles Luna, L. E. Chester, and W. E. B. Chase, individually and in behalf of all members of the Brotherhood of Railroad Trainmen, and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, a corporation,
Defendants.

Civil Action.
No. 67-C-285.

JUDGMENT ORDER.

This cause coming on to be heard on the Verified Complaint of Plaintiffs filed on February 23, 1967 and on the Verified Answers of the Defendants; and

It appearing that a Temporary Restraining Order was denied after arguments on February 23, 1967; and

This cause having been heard on the merits on the said Complaint and Answers on April 3 and 4, 1967, and the

Court having heard the testimony proffered by the Plaintiffs and having considered the written evidence offered by the Plaintiffs and having considered the Motions to Dismiss the Complaint by each of the Defendants, and having heard the arguments of counsel and being fully advised in the premises; and

The Court having tried this action upon the facts without a jury and having heretofore found the facts specially, and having heretofore stated separately its Conclusions of Law thereon and having directed the entry of an appropriate Judgment;

It Is Hereby Ordered, Adjudged and Decreed that the Complaint herein be and the same is hereby dismissed and that the Plaintiffs do have and recover nothing from the Defendants by reason of this action against said Defendants; that said action be and the same is hereby dismissed on the merits and that said Defendants do have and recover of and from said Plaintiffs their costs in this action.

Julius J. Hoffman,
United States District Judge.

Dated: May 24, 1967.

IN THE UNITED STATES DISTRICT COURT.

* * (Caption 67 C 285.) * *

(Title Omitted in Printing.)

NOTICE OF APPEAL.

Notice is hereby given that W. L. Birkholz, Ray Granger, Thomas Foley, David Tucibat, Wayne Blackburn and Marvin Hoisington, individually and in behalf of all members of the Switchmen's Union of North America, AFL-CIO, who are employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and Switchmen's Union of North America, AFL-CIO, an unincorporated association,

the plaintiffs above named, and each and all of them, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the denial of plaintiffs' Motion for a Preliminary Injunction, and the Findings of Fact, Conclusions of Law, and Judgment Order of District Judge Julius J. Hoffman dated May 24, 1967, dismissing plaintiffs' complaint.

Lee Leibik,
Ruth Weyand,
Attorney for Plaintiffs,
343 South Dearborn Street,
Chicago, Illinois 60604,
WAbash 2-0677.

OPINION.

In the
United States Court of Appeals
For the Seventh Circuit.

No. 16,340 September Term, 1967 September Session, 1967.

W. L. Birkholz, *et al.*,
Plaintiffs-Appellants,
v.
Elmer L. Dirks, *etc., et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

February 12, 1968.

Before Schnackenberg, Kiley and Swygert, *Circuit Judges.*

Kiley, *Circuit Judge.* The Switchmen's Union of North America (SUNA) and six of its members sued, individu-

ally and as representatives of all members of SUNA who are yard service employees on the Milwaukee, St. Paul, and Pacific Railroad (Milwaukee), seeking a judgment declaring the union shop agreement between the Milwaukee and the Brotherhood of Railroad Trainmen (Trainmen) void, and seeking damages and injunctive relief. The district court after a hearing dismissed the suit and SUNA and the representative employees appeal. We reverse.

The Trainmen's Union has, since the 1926 adoption of the Railway Labor Act, served as bargaining agent for the Milwaukee's yard service employees. Both SUNA and the Trainmen are among the five national operating craft unions represented on the National Railroad Adjustment Board under Sec. 153 (h) of the Railway Labor Act, 45 U. S. C. Since the Trainmen's Union has been the bargaining agent, some yard service employees have held cards in SUNA rather than in the Trainmen.

On November 14, 1966, SUNA filed a petition before the National Mediation Board for a representative election seeking certification as bargaining agent for all yard service employees of the Milwaukee. Two days later the Trainmen served notice on the Milwaukee for modification of the existing agreement, made in 1953. On February 1, 1967, the agreement was modified by adding the union shop amendment in dispute.[1] SUNA then brought this

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[1] Section 1.

(a) * * * all employees of the company * * * except as hereinafter provided, shall, as a condition of their continued employment * * * become members of the Brotherhood within sixty calendar days * * * and thereafter shall maintain membership in the Brotherhood; * * *

(b) It is agreed, as a condition of continued employment, all employees of the company shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act, having a labor contract with the C. M. St. P. & P. Railroad Company (lines East) covering em-

suit to void the amendment on the ground that it violated Section 2 Eleventh (c) of the Railway Labor Act.[2]

The district court in dismissing SUNA's complaint decided that the Milwaukee and Trainmen could contract to require members of SUNA to join the Trainmen despite the language of 2 Eleventh (c) because SUNA did not support the bargaining agreement's grievance committee,

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ployees of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employees from changing membership from one organization to another labor organization, having a labor contract with the C. M. St. P. & P. Railroad Company (lines East), covering employees of a craft or class in train or yard service; provided, further, however, that the right of a yardman, who does not hold interchangeable rights, to acquire or hold membership in an organization shall be confined to the Brotherhood.

[2] (c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of paragraph (h) of Section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

and had no obligation to the Milwaukee employees; and because the court was persuaded by defendant's argument that 2 Eleventh (c) must be restrictively interpreted to permit the type of union shop clause in the Trainmen's contract because the only purpose of 2 Eleventh (c) was to prevent an employee who temporarily changed crafts from being required to change unions and the contract provision fulfills this purpose. The court relied upon *Pennsylvania R. Co. v. Rychlik,* 352 U. S. 480, 492, and *Rohrer v. Conemaugh & Black Lick R. R. Co.,* 359 F. 2d 127.

The Trainmen and Milwaukee concede that their union shop clause violates Sec. 2 Eleventh (c) of the Railway Labor Act if that section is read literally. We agree. Par. (c) qualifies the right to enter into a union shop agreement given under Par. (a).[3] Under Par. (c) the membership requirement of the union shop clause must be satisfied as to employees "in engine, train, yard or hostling service" by membership in any union "national in scope, organized in accordance with the Act" which admits to membership any employee in a craft covering any of the services designated. It is plain that under the literal language of Par. (c) any requirement of membership in the Trainmen's Union negotiated under Par. (a) would have to permit alternative membership in SUNA since SUNA admits yard service employees to membership, and is, as the district court found, "national in scope and organized in accordance with the Act."

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[3] . . . any carrier . . . and a labor organization . . . shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class:

* * * * * * *

The union shop agreement signed by the Milwaukee and the Trainmen does not permit yard service employees to maintain alternate membership in SUNA. Under the agreement all operating craft employees must belong to the Trainmen unless they belong to another union which is national in scope and has a contract with the Milwaukee and unless the particular yardman concerned has interchangeable rights, *i. e.*, the right to be employed in another craft in addition to yard service. Thus the contract requires two conditions, in addition to the national in scope requirement of the Act, before alternate union membership is permissible. Under this agreement a yard service employee's membership in SUNA cannot serve as a substitute for membership in the Trainmen since SUNA has no contract with the Milwaukee and since most yard service employees do not have interchangeable rights.

The vital issue before us is whether Sec. 2 Eleventh (c) renders the February 1, 1967 union shop clause of defendants' agreement void. We think that the literal reading of Sec. 2 Eleventh (c) expresses the intention of Congress as demonstrated by the legislative history of the Act.

The legislative background of Sec. 2 Eleventh (c) is well known. In 1934 Congress, in an effort to combat company dominated unions which were then prevalent on railroads, outlawed the union shop. In 1951, however, railway labor organizations sought the authorization of union shop agreements. Congress was agreeable to authorizing the union shop but in hearings encountered the problem of intercraft mobility. Operating employees organized along craft lines frequently changed crafts either through temporary promotions or demotions as the railroad's needs for workers of a particular craft dictated. An employee who worked in one craft and belonged to his craft union might, for example, upon being promoted to another craft be required by a union shop

agreement to belong to the union which represented the new craft to which he had been temporarily promoted. He would then be faced with the choice of either maintaining dual union membership or of quitting his old union and perhaps sacrificing interests in pensions and other benefits under his original craft membership. The problem of intercraft mobility could also affect union members who have no interchangeable rights in another craft. The union to which these members belong might lose its majority to another craft union whose members have interchangeable rights with the first craft and are transferred into that craft. The craft union whose members had interchangeable rights could then negotiate a union shop agreement requiring the employee in the first craft to quit his now minority union or maintain dual union membership.

The evil of placing upon the operating employee the choice of maintaining dual union membership or of quitting his old union was recognized by Congress at the time proposals for authorizing the union shop were being considered. Three proposals for preventing this evil and solving the problem of intercraft relationships among operating employees were considered. The first proposal was aimed at protecting employees from denial of membership in the bargaining union because of membership in another union. This would have protected, for example, a member of the firemen's union from being denied membership in the engineers' union and thereby being denied work in a unit represented by the engineers. All operating unions objected to this proposal because it would not eliminate the choice of maintaining dual union membership or of quitting the union the employee had belonged to in the past.

The second solution was presented by the Trainmen. Under this proposal the union membership requirement

authorized by Sec. 2 Eleventh (a) could be satisfied with respect to closely related crafts where the employee held employment rights in more than one, or promotional rights from one, to another, by membership in the craft union which represents the employees in any craft in which he is entitled to work. In other words, the employee member of one of the five crafts could satisfy the membership requirement only by membership in the union that is the bargaining agent for the craft in which he is working or in a union that is the bargaining agent for another craft in which he is also entitled to work.

This second proposal would have provided the identical amount of protection for minority union members as does the contract entered into by the Trainmen and the Milwaukee and as would Sec. 2 Eleventh (c) if interpreted in the manner urged by the Trainmen. The Trainmen's proposal was rejected by Congress. While it is clear that the Trainmen's proposal would adequately protect the employee who was transferred from one craft to another and did not wish to give up membership in the union which represented his original craft, the proposal would offer no protection to the operating craft employee whose union became a minority union due to an influx of transferees from another craft, nor would the proposal give recognition to the operating craft tradition of permitting membership in minority unions.

The third proposal was a prohibition against requiring membership in more than one labor organization. This would have permitted an employee represented by an operating craft union to maintain membership in a non-operating union despite the existence of a union shop agreement.

The union shop bill as reported to the Senate contained the third proposal outlined above and because of this was opposed by the Trainmen and three other operating broth-

erhoods. The Senate postponed consideration of the bill to enable the four brotherhoods to produce a compromise proposal which they could all support. The result was the present language of Sec. 2 Eleventh (c) which was approved by the four brotherhoods and which was ultimately incorporated in the Act.

In the light of this legislative history we must reject the restrictive interpretation of Sec. 2 Eleventh (c) which the Trainmen urged unsuccessfully upon the Senate Committee and now urge upon us. We hold that the union shop provision of the collective bargaining agreement before us is violative of Sec. 2 Eleventh (c) properly interpreted.

We think it would be absurd to interpret away the literal language of 2 Eleventh (c) by reading it as though it said almost exactly what was said in a proposal which was rejected at committee hearings and which places members of SUNA—organized under the Act and national in scope and covering the craft of yard services—in the dilemma of choosing between compulsory dual unionism or a compulsory change from their own craft union to the Trainmen. Each horn of this dilemma was rejected by Congress in 1950. If Congress had intended to limit the protection afforded by 2 Eleventh (c) in the manner urged by the Trainmen they would have used the explicit language which the Trainmen had suggested to them. Moreover it must be remembered that the actual language of 2 Eleventh (c) was drafted by four operating brotherhoods including the Trainmen, and had these brotherhoods agreed that it was desirable to limit the scope of 2 Eleventh (c) as the Trainmen wished, they would have adopted the explicit language previously proposed by the Trainmen.

Moreover, if the interpretation of 2 Eleventh (c) urged by the Trainmen were adopted the result would be to

render the second proviso of 2 Eleventh (c) devoid of any meaning. The second proviso states that "nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services." The Trainmen's contract prevents craft employees from switching from the Trainmen to other operating craft unions.

We are impressed with the reasoning of Judge Herlands of the Southern District of New York in his opinion in *O'Connell et al. v. Erie Lackawanna Railroad Co. et al.*, 65 L. R. R. M. 2372. Judge Herlands rejected the argument of the Trainmen there that Sec. 2 Eleventh (c) should not be construed to make a union shop provision requiring members of other operating craft unions to join the Trainmen unlawful, where the men concerned did not have interchangeable rights. Judge Herlands pointed out the difficulties that would follow upon an insistence that Congress, even though it did not express it, intended the validity of a union shop agreement to depend on the interchangeable rights of each employee in the majority and minority unions involved. The result, as Judge Herlands stated, would be that each member of a majority union who is within the jurisdiction of a bargaining contract would be faced with the necessity of proving rights in another craft, and as a result federal courts might be called upon to make ad hoc adjudications in a large number of individual cases. Judge Herlands pointed out several practical problems which would be encountered in making these determinations. One reason that Sec. 2 Eleventh (c) was drafted as it was may well have been to avoid such problems.

We also consider the contemporaneous interpretation of this Section by the operating craft brotherhoods significant in determining its proper interpretation, since they

themselves drafted the Section to meet their own needs. It is undisputed that for fifteen years after the passage of the Act all union shop agreements entered into by standard operating unions, including the Trainmen, contained the exact literal language of Sec. 2 Eleventh (c) and that that language was interpreted to permit alternate membership in any standard operating craft union. The Trainmen's position would suggest that the drafters of 2 Eleventh (c), including itself, did not know what the Section meant and have been misapplying it for fifteen years. This position is inherently unpersuasive especially when it is recognized that the interpretation now urged would change the law to conform to the proposal which the Trainmen unsuccessfully advocated before Congress at the time the Section was enacted.

The fifteen year practice of allowing membership in any standard operating craft union to satisfy union shop agreements also militates strongly against the Trainmen's argument that the elimination of minority representation would promote peace between unions. It is difficult to see how labor peace would be promoted by abrogating what is, in effect, an agreement between the operating brotherhoods which has guided their relations for fifteen years.

We believe that the railroad unions responsible for Sec. 2 Eleventh (c), and Congress, deliberately chose to avoid the dangers of dual unionism by the method outlined in the literal language of Sec. 2 Eleventh (c) in order to provide clear and unequivocal protection from compulsory dual union membership, and also to avoid upsetting the balance of union power between the majority union bargaining agent and substantial minority union members within the bargaining unit.

We do not find *Pennsylvania R. Co. v. Rychlik*, 352 U. S. 480, to be inconsistent with our conclusion that

membership in SUNA must satisfy any union membership requirement negotiated by the Trainmen with the Milwaukee. The holding in *Rychlik* is that Sec. 2 Eleventh (c) of the Act makes only unions already qualified as electors for the labor members of the National Railroad Adjustment Board under Sec. 3 First, available for alternate membership under a union shop agreement. The plaintiff there had resigned from the Trainmen's Union and joined UROC, a rising competing union. The Trainmen requested the railroad to discharge Rychlik and this was done. UROC, however, was not a union national in scope eligible to elect members to the NRAB. What the Supreme Court said in dictum in that case was with respect to that factual situation.

The Trainmen also rely on *Rohrer v. Conemaugh & Black Lick R. R. Co.*, 359 F. 2d 127, but the holding there was that Sec. 2 Eleventh (c) does not apply at all to a railroad which is wholly owned by a steel company, which is not organized according to crafts, and all of whose employees are represented by the United Steel Workers Union. The Trainmen cite no case where a union shop agreement negotiated by one of the five national operating craft unions was permitted to bar an employee from belonging to another national operating craft union as an alternative to belonging to the bargaining union.

We therefore reverse the judgment of the district court and remand for further proceedings consistent with the views expressed in this opinion.

JUDGMENT.

United States Court of Appeals
For the Seventh Circuit,
Chicago, Illinois 60604.

Monday, February 12, 1968.

Before Hon. Elmer J. Schnackenberg, Circuit Judge, Hon. Roger J. Kiley, Circuit Judge, Hon. Luther M. Swygert, Circuit Judge.

W. L. Birkholz et al.,
Plaintiffs-Appellants,

No. 16340. vs.

Elmer L. Dirks, etc., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed, with costs, and that this cause be, and it is hereby Remanded to the said District Court for further proceedings consistent with the views expressed in the opinion of this Court filed this day.